(26,106)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 639.

THE BOARD OF PUBLIC UTILITY COMMISSIONERS, APPELLANT AND PLAINTIFF IN ERROR,

vs.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS.

APPEAL FROM AND IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

INDEX.

	Original.	Print
Petition	1	1
Opinion	3	3
Proceedings before the Board of Public Utility Commissioners in case No. 234	8	8
Notice to appear, June 7, 1915	8	8
Answer, June 30, 1915	8	8
Decision, September 20, 1915	9	9
Form of annual report	12	11
Stipulation as to record	27	25
Clerk's certificate	28	26
Judgment	29	27
Appeal and allowance	30	27
Petition for writ of error	31	28
Assignment of errors	32	29
Writ of error and allowance	33	29
Citation and service	35	30
Petition to enlarge time to file record	37	31
Order enlarging time to file record	37	31

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1 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

COMPAÑIA GRAL. DE TABACOS DE FILIPINAS, Petitioner,

vs.

THE BOARD OF PUBLIC UTILITY COMMISSIONERS, Respondent.

Be it remembered that the following proceedings were had in the above-entitled action:

On the 25th day of September, 1915, the petitioner filed with this Court a petition, reading as follows:

(Heading and Title.)

Now comes the petitioner in the above entitled cause, by its undersigned attorneys, and respectfully represents to this Honorable Court:

I.

That petitioner is a foreign corporation licensed to do business in the Philippine Islands, engaged in business therein as a common carrier of passengers and merchandise by water.

II.

That the respondent is an administrative Board organized under and pursuant to the provisions of Act 2307 of the Philippine Legislature.

III.

That on or about the 7th day of June, 1915, the respondent Board issued and caused to be served upon petitioner an order to show cause why petitioner should not be required to present annual reports giving a detailed account of its finances and of the operations of the vessels owned and operated by it, in the form and containing the matters indicated in the model annual reports, a copy of which accompanied the order; the said proceedings being identified in the records of respondent Board as case No. 234 thereof.

IV.

That within the time specified in the said order to show cause, the petitioner answered the same in writing and made op-
2 position thereto upon the following grounds, to-wit:

(*a*) That the requirements of the said proposed report are cumbersome and unnecessarily prolix and that the preparation of the same would entail an immense amount of clerical work.

(*b*) That the respondent Board has no authority in law to require petitioner to prepare and submit such annual reports in that those provisions of Act 2307 relied upon by the said Board as authority therefor, if construed as conferring such power, are invalid as constituting an unlawful attempt on the part of the legislature to delegate legislative power to the respondent Board.

V.

That thereupon the respondent Board set the matter down for hearing and at the time and place so designated a hearing was had.

VI.

That thereafter, to-wit: on the 20th day of September, 1915, the respondent Board entered an order overruling the objections made by petitioner in its said answer to the order to show cause, and requiring petitioner to prepare and present to the said Board, on or before the 1st day of March of each year, a detailed report of its finances and the operations of all steamers operated by petitioner within the Philippine Islands, in the form and containing the matters indicated in the said model of annual reports which accompanied the said order to show cause.

VII.

That petitioner is dissatisfied with the said decision of the respondent Board upon the grounds that the same is unreasonable and unduly burdensome and that the requirements thereof are beyond the scope of the lawful authority of the respondent Board.

Wherefore petitioner prays this Honorable Court in accordance with the provisions of Section 37 of Act No. 2307 to require the respondent Board to certify forthwith to the Court the records of all proceedings had before the said Board in said case No. 234 so that the same may be considered and that upon such hearing and consideration the decision of the respondent Board herein complained of be annulled and set aside and that petitioner recover its proper costs.

Manila, P. I., September 23, 1915.

GILBERT, COHN & FISHER,

(Signed) p. p. F. C. FISHER,

Attorneys for Petitioner.

On the 27th day of September, 1915, this Court issued an order requiring the Board of Public Utility Commissioners to file with the Court within the period of five days a certified copy of the record of the proceedings had before said Board in its case No. 234.

On the 30th day of September, 1915, the Acting Secretary of the Board of Public Utility Commissioners filed with this Court
3 a certified copy of the record of the proceedings in said case No. 234 of the Board of Public Utility Commissioners. Thereafter the parties filed their respective briefs, and after hearing on the briefs, this Court rendered an opinion and order, reading as follows:

(Heading and Title.)

This is an appeal or a petition for review of an order of the Board of Public Utility Commissioners of the Philippine Islands, requiring the petitioner to file a detailed report of its finances and operations in the form set forth in the petition.

The petitioner aileges that it is a foreign corporation organized under the laws of Spain and engaged in business in the Philippine Islands as a common carrier of passengers and merchandise by water; that on or about the 7th day of June 1915 the Board of Public Utility Commissioners issued and caused to be served on petitioner an order to show cause why petitioner should not be required to present detailed annual reports respecting its finances and operations respecting the vessels owned and operated by it, in the form and containing the matters indicated by the model attached to the petition; that after a hearing the Board of Public Utility Commissioners dictated an order in the following terms: "The respondent is therefore ordered to present annually on or before March first of each year a detailed report of finances and operations of such vessels as are operated by it as a common carrier within the Philippine Islands, in the form and containing the matters indicated in the model of annual report which accompanied the order to show cause herein." The model referred to is made a part of this opinion and may be found in an appendix thereto.

On its return to the order to show cause before the Board of Public Utility Commissioners the petitioner denied the authority of the Board to require the report asked for on the ground that the provision of Act 2347 relied on by said Board as authority for such requirement was, if construed as conferring such power, invalid as constituting an unlawful attempt on the part of the legislature to delegate legislative power to the Board. The petitioner also answered that the requirements of the Board with respect to the proposed report were "cumbersome and unnecessarily prolix and that the preparation of the same would entail an immense amount of clerical work."

The case coming here under the provision of section 37 of said Act 2347 the petitioner raises the same questions that it presented to the Board of Public Utility Commissioners in its answer to the order to show cause.

The section of Act 2347 under which the Board of Public Utility Commissioners relies for its authority, so far as pertinent to the case at hand, reads as follows:

"Sec. 16. The Board shall have power after hearing, upon notice,

by order in writing, to require every public utility as herein defined:

* * * * * * *

(e) To furnish annually a detailed report of finances and operations, in such form and containing such matters as the Board may from time to time by order prescribe."

4 As is apparent at a glance the provision conferring authority on the Board is very general. It is also very comprehensive. It calls for a detailed report of the finances and operations of the petitioning steamship company. That, it would seem, covers substantially everything; for there is very little to a steamship company but its finances and operations. It would have been practically the same if the statute had given the Board of Public Utility Commissioners power "to require every public utility to furnish annually a detailed report." Such provision would have been but little broader and little less general than the present provision. It is clear that a statute which authorizes a Board of Public Utility Commissioners to require detailed reports from public utilities, leaving the nature of the report, the contents thereof, the general lines which it shall follow, the principle upon which it shall proceed, indeed, all other matters whatsoever, to the exclusive discretion of the Board, is not expressing its own will or the will of the State with respect to the public utilities to which it refers. Such a provision does not declare, or set out, or indicate what information the State requires, what is valuable to it, what it needs in order to impose correct and just taxation, supervision or control, or the facts which the State must have in order to deal justly and equitably with such public utiiities and to require them to deal justly and equitably with the State. The legislature seems simply to have authorized the Board of Public Utility Commissioners to require what information the Board wants. It would seem that the legislature by the provision in question, delegated to the Board of Public Utility Commissioners all of its powers over a given subject-matter in a manner almost absolute, and without laying down a rule or even making a suggestion by which that power is to be directed, guided or applied.

In the case of Cincinnati, W. & A. R. Co. vs. Clinton County Comrs., 1 Ohio St. 77, the court, dealing with the question of whether a power is strictly legislative, or administrative, or merely relates to the execution of the law, said:

"The true distinction is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made."

This principle was applied in the case of Dowling et al. vs. Lancashire Insurance Co., 92 Wis. 63. In that case the statute provided that the insurance commissioner shall prepare, approve and adopt a printed form of fire insurance policy to conform as nearly as might be to that used in the State of New York. The Wisconsin

Supreme Court held that to be a delegation of legislative power saying:

"The act, in our judgment, wholly fails to provide definitely and clearly what the standard policy should contain, so that it would be put in use as a uniform policy, required to take the place of all others, without the determination of the insurance commissioner in respect to matters involving the exercise of a legislative discretion that could not be delegated, and without which the act should not possibly be put in use, as an act in conformity to which all fire insurance policies were required to be issued."

The court also said:

"The result of all of the cases on this subject is that a law must be complete, in all its terms and provisions, when it leaves the legislative branch of the government, and nothing must be left to the judgment of the electors or other appointee or delegate of the legislature, so that, in form and substance, it is a law in all its details, in præsenti, but which may be left to take effect in futuro, if necessary, upon the ascertainment of any prescribed fact or event."

In the case of Birdsall vs. Clark, 73 N. Y. 73, the court said:

"If discretion and judgment are to be exercised either as to time or manner, the body or officer entrusted with the duty must exercise it, and cannot delegate it to any other officer or person."

See also King vs. Concordia Fire Insurance Co., 140 Mich. 258; O'Neil vs. Insurance Co., 166 Pa. St. 72; Anderson vs. Assurance Co., 59 Minn. 182.

In the case of State ex rel. Adams vs. Burdge, 95 Wis. 390, a statute authorizing the State Board of Health "to make rules and regulations, and to take such measures as may in its judgment be necessary for the protection of the people of the state from Asiatic cholera, or other dangerous contagious diseases," and declaring that the term "dangerous and contagious diseases," as used in the act, "shall be construed and understood to mean such diseases as the state board of health shall designate as contagious and dangerous to the public health," was held to "import and include an absolute delegation of the legislative power over the entire subject here involved," and was therefore declared unconstitutional.

In the case of Merchants' Exchange of St. Louis vs. Knott, 212 Mo. 616, in declaring unconstitutional, on the ground of delegation of legislative power, a statute authorizing the Board of Railroad and Warehouse Commissioners to establish state inspection of grain "at such places or in such territory * * * as in their opinion may be necessary," the court said:

"It is obvious that the foregoing grant of power is given without statutory landmark, compass, map, guide-post or corner-stone in one whit controlling its exercise or prescribing its channel, or indicative of any certain intendment of the legislative mind, beyond the mere grant. In essence it is the power of pure and simple despotism."

Commenting on the statute, the court further said:

"True, the act was passed by the General Assembly, approved by the Chief Executive, and stands published as authenticated law, but to all intents and purposes it is only a barren ideality, having such

life as is thereafter breathed into it from an unconstitutional source. No Missourian may know whether it applies to him or his concerns as a rule of civil conduct, or will ever apply until in the
6 'opinion' of the commissioners it 'may be' considered 'necessary.' * * * The General Assembly may not clip itself of one iota of its lawmaking power by a voluntary delegation of any element of it—by putting its constitutional prerogative, its conscience and wisdom, 'into commission.'"

In the case of Schaezlein vs. Cabaniss, 135 Cal. 466, the question before the Court was the validity of the following provision of the State law of California:

"If in any factory or workshop any process or work is carried on, by which dust, filaments, or injurious gases are generated or produced, that are liable to be inhaled by the persons employed therein, and it appears to the Commission * * * that such inhalation could to a great extent be prevented by the use of some mechanical contrivance, it shall direct that such contrivance shall be provided, and within a reasonable time it shall be so provided and used."

Another section of the same Act made it a misdemeanor for any person to violate any of the provisions of the Act including those above quoted. Respecting the validity of the Act the Court said:

"The manifest objection to this law is that upon the commission has been imposed not the duty to enforce a law of the legislature, but the power to make a law for the individual, and to enforce such rules of conduct as he may prescribe. It is thus arbitrary special legislation and violative of the constitution."

The decision in the case of Interstate Commerce Commission vs. Goo-rich Transit Co., 224 U. S. 194, seems, by implication at least, to bear out the theory on which we are deciding this case. The question there involved the validity of an act authorizing the Interstate Commerce Commission to prescribe the form of accounts, records and memorandums to be kept by carriers, and to require such carriers to make annual reports to the Commission with respect to certain information defined in the Act. One of the questions raised by the steamship company was that section 20 constituted an invalid delegation of legislative power to the Commission. The Supreme Court held that there was no delegation of legislative power, but said:

"The Congress may not delegate its purely legislative powers to a commission, but having laid down the general rules of action under which a commission shall proceed, it may require of that commission the application of such rules to particular situations and the investigation of facts, with a view to making orders in a particular matter within the rules laid down by Congress. * * *

In Sec. 20 (of the Commerce Act) Congress has authorized the Commission to require annual reports. The act itself prescribes in detail what those reports shall contain. * * * In other words Congress has laid down general rules for the guidance of the Commission, leaving to it merely the carrying out of details in the exercise of the power so conferred. This, we think, is not a delegation of legislative authority."

7 In another part of the same decision the Court said with reference to the form of reports called for by the Interstate Commerce Commission:

"But such report is no broader than the annual report of such carriers as prescribed by Sec. 20 of the Act."

See also Field vs. Clark, 143 U. S. 649; State of Minnesota vs. Great Northern Ry. Co., 100 Minn. 445.

The Attorney General lays great stress on the case of Kansas City So. Ry. vs. United States, 231 U. S. 423. That case, however, so far as it touches the question of delegation of legislative power, was decided on the principles governing the case of Interstate Commerce Commission vs. Goodrich Transit Co., supra. Section 20 of the Act referred to in that and in the Goodrich case sets out in detail the form which the accounts shall take and the matters they shall contain, and even goes into considerable detail with regard to the classification of the carriers' accounts. In that case the Court said:

"It amounts, after all, to no more than laying down the general rules of action under which the Commission shall proceed, and leaving it to the Commission to apply those rules to particular situations and circumstances by the establishment and enforcement of administrative regulations."

In the case at bar the provision complained of does not lay "down the general rules of action under which the Commission shall proceed," nor does it itself "prescribe in detail what those reports shall contain." Practically everything is left to the judgment and discretion of the Board of Public Utility Commissioners which is unrestrained as to when it shall act, why it shall act, how it shall act, to what extent it shall act, or what it shall act upon.

We believe that the Legislature, by the provision in question, has abdicated its powers and functions in favor of the Board of Public Utility Commissioners with respect to the matters therein referred to, and that such act is in violation of the Act of Congress of July 1, 1902. We believe that the legislature, by the provision referred to, has not asked for the information which the State wants but has authorized the Board to obtain the information which the Board wants.

The order appealed from is set aside and the cause is returned to the Board of Public Utility Commissioners with instructions to dismiss the proceeding.

So ordered.

(Sgd.) SHERMAN MORELAND.

Concurring:

(Sgd.) C. S. ARELLANO.
" FLORENTINO TORRES.
" MANUEL ARAULLO.

Dissenting:

(Sgd.) A. C. CARSON.
" GRANT T. TRENT.

8 The following proceedings were had before the Board of Public Utility Commissioners in its case No. 234 hereinbefore referred to:

On the 7th day of June, 1915, the Board issued the following order:

(Heading and Title.)

Under and by virtue of the authority contained in sub-paragraph (*e*) of Section 16 of Act No. 2307, as amended, you are hereby required to be and appear before the Board of Public Utility Commissioners, at its office in the City of Manila, on the thirtieth day of June, 1915, at nine a. m., to show cause why you should not be required to furnish annually on or before March first of each year a detailed report of finances and operations in the form and containing the matters indicated in the accompanying draft of annual report.

By direction of the Board:

(Sgd.) C. C. MITCHELL, *Secretary.*

Manila, June 7, 1915.

On the 30th day of June, 1915, the petitioner herein filed the following answer to the above order:

(Heading and Title.)

Now comes the compañia General de Tabacos de Filipinas and respectfully shows to this Honorable Board, in answer to the order issued herein under date of June 7, 1915, that it believes that the Board is without legal authority to require respondent to keep its accounts in the manner prescribed by the Board, or to file the annual reports required, for the following reasons:

(*a*) That respondent is a corporation organized under the laws of the Kingdom of Spain, with branches in many countries, and is engaged in many different branches of business, of which the business of water transportation is merely a secondary branch, accessory to its principal business, for which reason respondent does not regard itself as under obligation to furnish information concerning its history, capital, shareholders, bondholders, dividends, real property, etc.; furthermore, we have no record of the greater part of the required data, which has no connection with our coastwise shipping business.

(*b*) That when Act 2307 of the Philippine Legislature was enacted there was no law in force, nor is there at the present time any law in force, imposing upon shipowners the duty of keeping the accounts of their business in any particular form, or to furnish reports to the government, or to any official of the government.

(*c*) That if Article 16 of Act 2307, paragraphs D and E, should be construed as authorizing this Board to impose any particular form of accounting, or to require shipowners to file reports, such as this Board proposes to require, the law would be void as constituting an unlawful delegation of legislative power to the Board and to the In-

9 sular Auditor, contrary to the provisions of the Act of Congress of the United States enacted July 1, 1902, and more particularly Article 7 of said Act.

(*d*) Because even assuming, which we respectfully deny, that this Board has authority to require shipowners to adopt any particular system of accounting, the form of accounting which the Board proposes to require is different than that in use by the respondent company, which would have no objection, as heretofore stated, to giving general statements of the expenses and receipts of its vessels for the purpose of justifying the increase in freight rates, but not the detailed information, line by line, which respondent regards as its private affair, and the publication of which would be contrary to mercantile practice and to the interests of the shipowners.

Wherefore, respondent prays the Board to dismiss this proceeding without further action.

Manila, P. I., June 30, 1915.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS,

(Sgd.) C. DE LOS HERAS,

Acting General Manager.

After hearing the respective parties, the Board, on the 20th day of September, 1915, rendered the following decision and order:

On the seventh of June, 1915, the Board, under and by virtue of the authority contained in sub-paragraph (*e*) of Section 16 of Act 2307, as amended, required the respondent herein, the Compañia General de Tabacos de Filipinas, to be and appear before it at its office in the City of Manila on the thirtieth day of June, 1915, to show why it should not be required to furnish annually, on or before March first of each year, a detailed report of finances and operations of the vessels operated by it as a common carrier, in the form and containing the matters indicated in a model annual report, copy of which accompanied the order.

This order was one of a number of orders of similar purport, issued on the same day, against all common carriers by water within the Philippine Islands of whom the Board has any knowledge.

On the thirtieth day of June, 1915, the day set for the hearing the respondent filed an answer to the Board's order in which the jurisdiction of the Board to require the annual report proposed is attacked. This answer is substantially the same as the answers presented by other members of the Philippine Shipowners' Association and a large number of other carriers.

In the answer it is alleged that the respondent is an anonymous partnership organized in Spain with branches in various countries, engaged among other things in marine transportation business, this business being incidental to the respondent Company's principal business, and therefore it does not consider itself obligated to furnish information as to its history, capital, shareholders, bondholders, dividends, real property, etc.; that on the date of passage of Act No. 2307 of the Philippine Legislature there was no law in force, and there is no law in force at present imposing upon ship

10 owners the obligation of carrying their accounts in any special manner, or of presenting reports to the Government, or to any officer of the same, regarding said business; that if paragraphs (*d*) and (*e*) of Article 16 of Act No. 2307 should be interpreted as authorizing this Board to prescribe a system of accounting, or to require the presentation of reports by ship owners, as this Board is undertaking to do, said provisions would be null as an unlawful delegation of legislative authority to the Board and to the Insular Auditor in violation of the provisions of the Act of Congress of July 1, 1902, and especially of Article No. 7 of said act.

The respondent closes its answer by manifesting that even though the Board should have the power to prescribe a system of accounting for ship owners, that which is proposed varies from that now employed by the Company, and that the Company would have no objection in furnishing the Board general information regarding the expenses and earnings of its floating equipment, but would not furnish this information in detail because it regards such information as purely private and in violation of commercial practice and the interests of the ship owners to give such information publicity.

On the day appointed for the hearing, certain evidence was taken in behalf of the respondent, from which we find that the respondent is a public utility operating various lines of steamships within the Philippine Islands, and consequently within the jurisdiction of this Board for the purpose of carrying out the provisions of Act No. 2307, as amended. We find that the respondent employs a system of accounting prescribed by its Board of Directors in Barcelona, and that the final balances of the Company's business are prepared in Barcelona and not in the Philippine Islands. An examination in detail of the proposed report disclosed that it was within the power of the respondent to furnish all the information required with reasonable complet-ness and accuracy, and we find such to be the fact. Such minor details as may really be beyond the power of the respondent to furnish can be adjusted by correspondence.

We are unable to agree with the respondent that we should take no action in this matter because paragraphs (*d*) and (*e*) of Article 16 of Act No. 2307, under which the Board is now proceeding, are void as constituting an unlawful delegation of legislative functions to the Board and to the Insular Auditor in violation of the provisions of the Act of Congress of July 1, 1902, and especially of Article 7 of said act.

The Act of Congress referred to is the Philippine Bill and the section referred to transfers the legislative power theretofore conferred upon the Philippine Commission to the Philippine Legislature upon the establishment thereof.

There are two reasons why we should give no consideration to this objection.

The first is that this Board is an administrative tribunal created by the Legislature for the purpose of carrying into effect the law of its creation. It should take its organic law as it finds it leaving to the courts the question of the constitutionality of any of the provisions of that law.

The second is that the respondent's contention is unsound on its merits, simply because the power conferred upon the Board under the provisions of the act above quoted is not legislative in
11 character. It will be noted that the Legislature has prescribed the information that may be required in a general way. That information must be with regard to finances and operations. The Board, however, is authorized to determine what information with regard to finances and operations it may require and the form in which that information shall be furnished.

No case has been called to our attention, and we have been unable to find any in which it has been held that the power to require information with regard to certain specified matters in the form of an annual report, and to prescribe the form in which that information shall be furnished, and of what it shall consist, is a legislative power. In our opinion it is very essentially an administrative power.

A part of the duty of this Board is to collect information which will be useful to it in the performance of its administrative duties and which will be useful to the public in its dealings with the Board and with public utilities. The power to determine what information shall be furnished and the form in which it shall be furnished within the general scope of the information which the Board is authorized to obtain under the statute is not a legislative power.

This view is fortified by the fact that while at least thirty-eight States have similar statutes now on their statute books and Congress has vested similar powers in the Interstate Commerce Commission and the Comptroller of the Currency, no case has been found in which the conferring of such power has been held to be a void delegation of legislative authority.

The respondent is therefore ordered to present annually on or before March first of each year a detailed report of finances and operations of such vessels as are operated by it as a common carrier within the Philippine Islands, in the form and containing the matters indicated in the model of annual report which accompanied the order to show cause herein.

Manila, September 20, 1915.

By direction of the Board:

(Sgd.) R. T. SCHOLES,
Acting Secretary.

The form of annual report called for by the order of the Board issued on the 7th day of June, 1915, as hereinbefore stated, is as follows:

12 Copy.

(Annual Report—Water Carriers.)

Annual Report of —— to the Board of Public Utility Commissioners of the Philippine Islands for the Calendar Year 191–.

[Seal Board of Public Utility Commissioners, Philippine Islands.]

13 Copy.

History.

1. Name & P. O. address of carrier making this report?.....
.....
2. Date of organization, if a company?.....
3. Under laws of what Government, State, or Territory organized? .....
.....
4. If a consolidated company, name the constituent companies. Give reference to charters of each, and all amendments, together with date and authority for each consolidation?.....
.....
5. If a reorganized company, give name of original corporation, and refer to laws under which it was organized.....
.....

Organization.

Names of directors.	Post office address.	Date of expiration of term.
.....	.....	.....

Total number of stockholders at date of last election?.....
Date of last meeting of stockholders for election of directors?..
.....
Give post-office address of general office?.....
Give post-office address of operating office?.....

14 Copy.

Vessels Operated.

Name.	Dimensions.	Tonnage. Gross.	Tonnage. Net.	Cargo capacity.	Passenger capacity. 1st Cl.	Passenger capacity. 2nd.	Passenger capacity. 3rd.	When, where and by whom built.	Original cost.
.....	.....	.....	...	.....	.....	....	...	.....	.....
.....	.....	.....	...	.....	.....	....	...	.....	.....

Name.	Terminals. From—	Terminals. To—	Intermediate ports of call.	Number of trips during year.	How operated, as owner or under lease, time charter, consignment, etc.	Length of time laid up for repairs during year.
.....	....	...	.....	.....	.....	.....
.....	....	...	.....	.....	.....	.....

15 Copy.

Capital Stock.

Description.	Number of shares authorized.	Par value of shares.	Total amount issued & outstanding.	Total cash realized.	Dividends declared during year. Amount.	Dividends declared during year. Rate.
Capital Stock	.....	.....	.....	.....	.....	....
Common	.....	.....	.....	.....	.....	....
Preferred	.....	.....	.....	.....	.....	....
.....	.....	.....	.....	.....	.....	....
Total	.....	.....	.....	.....	.....	....

Funded Debt.

Class of bond or obligation.	Date of issue.	When due.	Amount of authorized issue.	Amount issued.	Amount outstanding.	Cash realized on amount issued.	Interest. Rate.	Interest. Amount paid during year.
.....	.....	.....	.....	.....	.....	.....	...	.....
.....	.....	.....	.....	.....	.....	.....	...	.....
Total ...	.....	.....	.....	.....	.....	.....	...	.....

16 Copy.

Cost of Equipment, etc., and Permanent Improvements.

Item.	Original purchase price.	Expenditure during year. Charged to current income.	Expenditure during year. Charged to special funds.	Expenditure during year. Charged to capital.	Total cost to ——, 19—. (End of last year.)	Total cost to ——, 19—. (End of this year.)	Depreciation.
Real Estate, etc.:							
Land	.....	.....	.....	.....	.....	.....	.....
Fuel Stations (Coal Storage) .	.....	.....	.....	.....	.....	.....	.....
Buildings and Fixtures	.....	.....	.....	.....	.....	.....	.....
Docks and Wharves	.....	.....	.....	.....	.....	.....	.....
Legal Expenses	.....	.....	.....	.....	.....	.....	.....
Interest and Discount	.....	.....	.....	.....	.....	.....	.....
General Expenses	.....	.....	.....	.....	.....	.....	.....
Total for real estate, etc.	.....	.....	.....	.....	.....	.....	.....

Equipment:

Steamers (Give name of each below)	.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....	.....
Tugs	.....	.....	.....	.....	.....	.....	.....
Launches	.....	.....	.....	.....	.....	.....	.....
Lighters	.....	.....	.....	.....	.....	.....	.....
Lorchas	.....	.....	.....	.....	.....	.....	.....
Other Craft	.....	.....	.....	.....	.....	.....	.....
Shop Machinery and Tools..	.....	.....	.....	.....	.....	.....	.....
Discount and Commission....	.....	.....	.....	.....	.....	.....	.....
Total for Equipment..	.....	.....	.....	.....	.....	.....	.....
Total for real estate, etc.	.....	.....	.....	.....	.....	.....	.....
Grand Total	.....	.....	.....	.....	.....	.....	.....

17

Copy.

Schedule of Real Property of —— at End of Calendar Year 191–

Location.	Description of property.	Cost on the books.	Location.	Description of property.	Cost on the books.
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....

18 Copy.

Summary of Earnings from Operation.

Item.	Total receipts.	Deductions account of repayments, etc.	Actual earnings.
Passenger:			
Passenger Revenue	.....	.....	.....
Less Repayments for			
Tickets Redeemed	.....	.....	.....
Excess fares refunded	.....	.....	.....
Other repayments	.....	.....	.....
Total deductions	.....	.....	.....
Total Passenger Revenue..	.....	.....	.....
Freight:			
Freight Revenue	.....	.....	.....
Less Repayments:			
Overcharge to shippers	.....	.....	.....
Other repayments	.....	.....	.....
Total deductions	.....	.....	.....
Total Freight Revenue ..	.....	.....	.....
Total Passenger & Freight Earnings..	.....	.....	.....
Other Earnings from Operation:			
Government subsidies	.....	.....	.....
Charter of vessel	.....	.....	.....
Mail	.....	.....	.....
Express	.....	.....	.....
Extra baggage	.....	.....	.....
Towage, ferry service and lighterage..	.....	.....	.....
Rents from storehouses, docks, etc....	.....	.....	.....
Rents not otherwise provided for.....	.....	.....	.....
Other sources	.....	.....	.....
Total Other Earnings from Operation	.....	.....	.....
Total Gross Earnings from Operation	.....	.....	.....

19 Copy.

Summary of Operating Expenses.

Item.	Amount.
Maintenance of Structures:	
Superintendence	₱.....
Docks and wharves—maintenance	₱.....
Docks and wharves—depreciation	₱.....
Buildings and fixtures—maintenance	₱.....
Buildings and fixtures—depreciation	₱.....
Stationery and printing	₱.....
Other expenses	₱.....
Total	₱.....
Maintenance of Equipment:	
Superintendence	₱.....
Boilers and machinery—Repairs and cleaning	₱.....
Boilers and machinery—Reserve for deferred repairs	₱.....
Boilers and machinery—Depreciation	₱.....
Hulls—Steam craft—Repairs and cleaning	₱.....
Hulls—Steam craft—Reserve for deferred repairs	₱.....
Hulls—Steam craft—Depreciation	₱.....
Steam Craft—Other repairs	₱.....
Hulls (other craft) Repairs and cleaning	₱.....
Hulls (other craft) Reserve for deferred repairs	₱.....
Hulls (other craft) Depreciation	₱.....
Other Craft—Other repairs	₱.....
Repairs and renewals of shop machinery and tools	₱.....
Stationery and printing	₱.....
Other expenses	₱.....
Total	₱.....
Conducting Transportation:	
Superintendence	₱.....
Salaries of officers	₱.....
Wages of crew	₱.....
Subsistence of officers and crew	₱.....
Subsistence of passengers	₱.....
Fuel	₱.....
Water	₱.....
Lubrication	₱.....
Bar Supplies	₱.....
Other Supplies	₱.....
Total	₱.....
Total carried forward	₱.....

20 Copy.

Summary of Operating Expenses—Concluded.

Item.	Amount.
Total brought forward	₱.....
Conducting Transportation (Continued):	
Piloting, towing, and docking	₱.....
Stevedoring and warehousing	₱.....
Hire of equipment (balance)	₱.....
Telegraph expenses	₱.....
Loss and damage	₱.....
Injuries to persons	₱.....
Advertising	₱.....
Expenses of agencies	₱.....
Commissions	₱.....
Rents of buildings and other property	₱.....
Stationery and printing	₱.....
Other expenses	₱.....
Total	₱.....
General Expenses:	
Salaries of general officers	₱.....
Salaries of clerks and attendants	₱.....
General office expenses and supplies	₱.....
Insurance	₱.....
Legal expenses	₱.....
Stationery and printing (general offices)	₱.....
Other expenses	₱.....
Total	₱.....
Recapitulation of Expenses:	
Maintenance of structures	₱.....
Maintenance of equipment	₱.....
Conducting transportation	₱.....
General expenses	₱.....
Grand total	₱.....

Percentage of operating expenses to earnings —%.

21 Copy.

NOTE.—Use one of these pages for "Receipts" and "Expenses" for each steamer operated. Total of all boats should be shown under Summaries of Earnings from Operation and Operating Expenses.

Receipts of Steamer —. Run —.
Number of trips during year ending December 31, 191-, —.

Passenger receipts...	₱.....	Total forward.....	₱.....
Freight receipts.....	₱.....	Berth receipts.....	₱.....
Towage receipts.....	₱.....	Dining room receipts.	₱.....
Ferry service.....	₱.....	Bar receipts.....	₱.....
Express receipts.....	₱.....	Parcel room receipts..	₱.....
Mail receipts.....	₱.....	Storage, freight.....	₱.....
Subsidies	₱.....	Storage, baggage....	₱.....
		Wireless receipts.....	₱.....
Total forward.	₱.....	*Miscellaneous	₱.....
		Grand total	₱.....

* Including lighterage, pilotage, salvage, stevedoring, wharfage, wreckage, etc.

Statistical Information.

Total number of cubic meters of freight earning revenue, measurement basis..... .....
" " " tonnes of freight earning revenue, weight basis ....
" " " non-revenue cubic meters of freight carried—measurement basis. .....
" " " " " tonnes of freight carried, weight basis..... .....
" " " passengers carried, earning revenue.... .....
" " " " " free ....

Expenses.

	Total number employed.	Average number per trip.	Total amount of salary paid.
Captains	.....	.....	.....
Pursers	.....	.....	.....
Clerks	.....	.....	.....
Pilots	.....	.....	.....
Mates	.....	.....	.....
Engineers	.....	.....	.....
Firemen	.....	.....	.....
Wireless operators	.....	.....	.....
Cooks	.....	.....	.....
Stewards	.....	.....	.....
Deck hands	.....	.....	.....
All other employees	.....	.....	.....
Totals	.....	.....	.....

(Other expenses, see next sheet.)

22 Copy.

Other Expenses.

	Total amount.
Subsistence of Officers and Crew	₱.....
Subsistence of Passengers	₱.....
Fuel	₱.....
Water	₱.....
Lubrication	₱.....
Bar Supplies	₱.....
Other Supplies	₱.....
Piloting, Towing, and Docking Fees	₱.....
Stevedoring and Warehouse Expense	₱.....
Repairs	₱.....
Insurance	₱.....
Reserve for deferred maintenance—Boilers and machinery	₱.....
Depreciation—Boilers and machinery	₱.....
Reserve for deferred maintenance Hulls	₱.....
Depreciation—Hulls	₱.....
Miscelianeous	₱.....
Total Expense	₱.....

23 Copy.

Income Account.

Operating Revenues—Page	.....	.....
Operating Expenses—Page	.....	.....
Net Operating Revenue	.....	.....
Miscellaneous Income:		
Interest on Deposits	.....	.....
Income from Securities Owned	.....	.....
Rents of Leased Properties	.....	.....
Other Miscellaneous Income (Itemize)	.....	.....
Total	.....	.....
Gross Income Less Operating Expenses	.....	.....
Deductions from Income	.....	.....
Taxes:		
On Real and Personal Property	.....	.....
On Capital Stock	.....	.....
On Earnings	.....	.....
Miscellaneous	.....	.....
Total Taxes	.....	.....
Interest:		
On Funded Debt	.....	.....
On Floating Debt	.....	.....
Total Interest	.....	.....
Rent of Leased Properties	.....	.....
Other Deductions from Income (Itemize)	.....	.....
Total Deductions	.....	.....
Net Income for Year	.....	.....
Net Loss for Year	.....	.....
Disposition of Net Income	.....	.....
Reserves and Special Charges (Itemize)	.....	.....
Dividends — % on ₱ — Pref. Stock	.....	.....
Dividends — % on ₱ — Com. Stock	.....	.....
Total	.....	.....

Surplus for Year	.....	.....
Deficit for Year	.....	.....
Profit and Loss Balance at Beginning of year	.....	.....
Credit Balance	.....	.....
Debit Balance	.....	.....
Profit or Loss Adjustments During Year (Itemized)	.....	.....
Credits	.....	.....
Total	.....	.....
Debits	.....	.....
Total	.....	.....
Profit and Loss Balance at End of Year	.....	.....
#Credit Balance	.....	.....
#Debit Balance	.....	.....

#To agree with Balance shown on Balance Sheet.

Copy.

General Balance Sheet of the —— at End of Calendar Year 191–

Assets.	End of previous calendar year.	End of year reported.	Liabilities.	End of previous calendar year.	End of year reported.
Fixed Assets:			Capital Stock:		
Real property	.....	.....	.....	.....	.....
Steamships	.....	.....	.....	.....	.....
Other floating equipment	.....	.....	.....	.....	.....
Other equipment	.....	.....			
Total	.....	.....			
			Long Term Debt:		
Accrued Depreciation (Cr.)	.....	.....	.....	.....	.....
Depreciated fixed assets..	.....	.....	.....	.....	.....
Securities and investments	.....	.....	.....	.....	.....
Current Assets:			Current Liabilities:		
Supplies and materials..	.....	.....	Accounts payable	.....	.....
Accounts receivable	.....	.....	.....	.....	.....
Cash	.....	.....	.....	.....	.....
Deferred Charges:			Deferred Credits:		
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
Profit and Loss	.....	.....	Profit and Loss	.....	.....
(Debit Balance)	.....	.....	(Credit Balance)	.....	.....
Grand Total	.....	.....	Grand Total	.....	.....

Copy.

Accidents to Persons.

Kind of accident.	Passengers.		Other persons.		Crew.		Other employees.		Total.	
	Killed.	Injured.	Killed.	Injured.	Killed.	Injured.	Killed.	Injured.	Killed.	Injured.
Collisions	....	.....	....	.....	.....	.....	....	.....	....	.....
Falling from boats	....	.....	....	.....	.....	.....	....	.....	....	.....
Jumping from boats	....	.....	....	.....	.....	.....	....	.....	....	.....
Handling freight	....	.....	....	.....	.....	.....	....	.....	....	.....
Fire	....	.....	....	.....	.....	.....	....	.....	....	.....
Other causes	....	.....	....	.....	.....	.....	....	.....	....	.....
Total	....	.....	....	.....	.....	.....	....	.....	....	.....

Accidents to and Loss of Property During Year.

Description of property.	Cause of accident.	Date.	Place of occurrence.	Loss.	Insurance.
.....	.....	....	.....	.....	.....
.....	.....	....	.....	.....	.....

26 Copy.

Oath.

CITY OF.....
Province of.....

We, the undersigned .....
and .....
of the .....Company, on our oath do severally say that the foregoing return has been prepared, under our direction, from the original books, papers, and records of said Company; that we have carefully examined the same, and declare the same to be a complete and correct statement of the business and affairs of said Company in respect to each and every matter and thing therein set forth, to the best of our knowledge, information, and belief; and we further say that no deductions were made before stating the gross earnings or receipts herein set forth except those shown in the foregoing accounts; and that the accounts and figures contained in the foregoing return embrace all of the financial operations of said Company during the period for which said return is made.

.....
President.
(Or other chief officer.)

.....
Treasurer.
(Or other officer in charge of the accounts.)

Subscribed and sworn to before me this — day of ——, 19—. Affiants exhibited to me their cedulas No. — issued at —— on —— —, 19—, and No. — issued at —— on —— —, 19—.

.....

My commission expires —— —, 191–.

27 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

COMPAÑIA GRAL. DE TABACOS DE FILIPINAS, Petitioner,

vs.

THE BOARD OF PUBLIC UTILITY COMMISSIONERS, Respondent.

Stipulation.

Now come the parties to the above-mentioned cause by their respective attorneys, and stipulate and agree that the foregoing trans-

cript of the record of this cause is correct, and that it is complete, saving such omissions as have been made by their consent.

Manila, P. I., January 25, 1917.

GILBERT, COHN & FISHER,
By F. C. FISHER,
Attorneys for Petitioner.
RAMÓN AVANCEÑA,
Attorney General, Attorney for Respondent.

J. A. S.

28 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 11216.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Petitioner,

versus.

THE BOARD OF PUBLIC UTILITY COMMISSIONERS, Respondent.

I, V. Albert, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing twenty-seven (27) typewritten pages contain a true and correct translation and transcript of the record and proceedings in the Supreme Court of the Philippine Islands and in the Board of Public Utility Commissioners in the case of the Compañia General de Tabacos de Filipinas versus The Board of Public Utility Commissioners, bearing No. 11216 on the docket of this Supreme Court.

In witness whereof, I hereunto set my hand and affix the seal of the Supreme Court of the Philippine Islands this 29th day of January, A. D. 1917.

[Seal Corte Suprema Islas Filipinas.]

V. ALBERT,
Clerk of the Supreme Court
of the Philippine Islands.

29 THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

March 8, 1916.

R. G. No. 11216.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Petitioner,

versus.

THE BOARD OF PUBLIC UTILITY COMMISSIONERS, Respondent.

Judgment.

The Court having regularly acquired jurisdiction for the trial of the above-entitled cause submitted by both parties for decision, after consideration thereof by the Court upon the record, its decision and order for judgment having been filed on the sixth day of March, A. D. nineteen hundred sixteen.

By virtue thereof the order appealed from is hereby set aside and the cause is returned to the Board of Public Utility Commissioners with instructions to dismiss the proceeding.

[Seal Corte Suprema Islas Filipinas.]

(Sgd.) V. ALBERT,
Clerk of the Supreme Court
of the Philippine Islands.

Certified correct:
V. ALBERT,
Clerk of the Supreme Court
of the Philippine Islands.

ar.

30 Clerk's Office, Supreme Court, Philippine Islands, Sep. 13, 1916, 3:45 p. m.

Ra.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 11216.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Petitioner,

vs.

THE BOARD OF PUBLIC UTILITY COMMISSIONERS, Respondent.

Appeal.

The above named respondent, conceiving itself aggrieved by the decree made and entered on the 6th day of March, 1916, in the above-

entitled cause, does hereby appeal from said decree to the Supreme Court of the United States for the reasons specified in the assignment of errors, which is filed herewith; and prays that this appeal may be allowed, and that a transcript of the record, proceedings and papers, upon which the decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Manila, P. I., September 12, 1916.

RAMÓN AVANCEÑA,
Attorney-General, Attorney for Respondent.

The foregoing claim of appeal is allowed.

SHERMAN MORELAND,
Associate Justice of the Supreme Court of the Philippine Islands.

J. A. S.

31 Filed Clerk's Office, Supreme Court, Philippine Islands, Sep. 13, 1916, 3.45 p. m.

Ra.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 11216.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Petitioner,

vs.

THE BOARD OF PUBLIC UTILITY COMMISSIONERS, Respondent.

Petition for Writ of Error.

To the Honorable Justices of the Supreme Court of the United States:

Comes the above-named respondent, by its attorney, and prays that in the record and proceedings had in the above-entitled cause in the Supreme Court of the Philippine Islands against the said respondent on the 6th day of March, 1916, manifest error has happened to the great damage of the said despondent.

Wherefore, said respondent prays for the allowance of a writ of error in said cause and for such other orders and process as may cause same to be corrected by the said Supreme Court of the United States.

Manila, P. I., September 12, 1916.

RAMÓN AVANCEÑA,
Attorney General for the Philippine Islands, Attorney for Respondent.

J. A. S.

Ra.

32 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 11216.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Petitioner,

vs.

THE BOARD OF PUBLIC UTILITY COMMISSIONERS, Respondent.

Assignment of Errors.

I.

The Court erred in setting aside the order of the Board of Public Utility Commissioners of the Philippine Islands.

II.

The Court erred in holding that the provision of section 16, subsection (*e*), of Act No. 2307, of the Philippine Legislature is in violation of the Act of Congress of July 1, 1902.

Manila, P. I., September 12, 1916.

RAMÓN AVANCENA,
Attorney General,
Attorney for the Respondent.

J. A. S.

33 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Justices of the Supreme Court of the Philippine Islands, Greeting:

Because in the record and proceedings, and also in the rendition of a judgment in a cause which is in said Supreme Court of the Philippine Islands, before you or some of you, between the Compañia General de Tabacos de Filipinas, petitioner, and the Board of Public Utility Commissioners, respondent, a manifest error has happened to the great damage of said respondent, the Board of Public Utility Commissioners, as by its complaint appears.

We, being willing that the error, if any has been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same to the Supreme Court of the United States together with this writ, so that you

may have the same in the City of Washington on the 11th day of January next, in said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done to correct that error what of right and according to the laws and customs of the United States — be done.

Witness, the Honorable Edward Douglass White, Chief Justice of the United States, thirteenth day of September, in the year of our Lord one thousand nine hundred and sixteen.

V. ALLEN,
Clerk of the Supreme Court
of the Philippine Islands.

34 The foregoing writ of error is allowed this 13th day of September, 1916.

Let a certified copy of the records, testimony, stipulation, and all proceedings herein, be transmitted forthwith to said Supreme Court of the United States.

SHERMAN MORELAND,
Associate Justice of the Supreme
Court of the Philippine Islands.

35 Filed Clerk's Office, Supreme Court, Philippine Islands, Sep. 22, 1916, 9.45 a. m.

THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 11216.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Petitioner,

versus

THE BOARD OF PUBLIC UTILITY COMMISSIONERS, Respondent.

Citation.

The President of the United States to the "Compañia General de Tabacos de Filipinas," Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States of America, at the City of Washington, D. C., within one hundred and twenty days from the date of this writ, pursuant to a writ of error duly allowed by the Supreme Court of the Philippine Islands, and filed in the Clerk's office of said Court on the 13th day of September, 1916, in a cause wherein The Board of Public Utility Commissioners is plaintiff in error and you are defendant in error, to show cause, if any,

36 why the decree rendered against said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, this nineteenth day of September, in the year of our Lord one thousand nine hundred and sixteen.

SHERMAN MORELAND,
Associate Justice of the Supreme Court of the Philippine Islands.

Service of a copy of the within citation is hereby admitted this 21st day of September, 1916.

GILBERT, COHN & FISHER,
p. p. CHARLES C. COHN,
Attorneys for the Petitioner, Compañia General de Tabacos de Filipinas.

ar.

37 Filed Clerk's Office, Supreme Court, Philippine Islands, Jan. 16, 1917, 4.35 p. m.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. #11216.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Petitioner,

vs.

THE BOARD OF PUBLIC UTILITY COMMISSIONERS, Respondent.

Now comes the respondent in the above entitled cause by its undersigned attorney, and respectfully requests that an extension of sixty days from the 17th day of January, 1917, be allowed for the transmission and filing of the record of this cause in the office of the Clerk of the Supreme Court of the United States.

Manila, P. I., January 16th, 1916.

RAMÓN AVANCENA.

Service accepted this 21st day of December, 1916. No objection is made to the granting of the extension requested by the respondent Board.

GILBERT, COHN & FISHER,
p. p. F. C. FISHER,
Attorneys for the Compañia General de Tabacos de Filipinas, Petitioner.

38 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. #11216.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Petitioner,

vs.

THE BOARD OF PUBLIC UTILITY COMMISSIONERS, Respondent.

Upon reading and filing the petition of the respondent in the above entitled cause for an extension of time for the filing of the record of said cause in the office of the Clerk of the Supreme Court of the United States at Washington, D. C., and it appearing that the petitioner and defendant in error have consented to such extension, the time for the filing of said record is hereby extended for a period of sixty days from and after the 17th day of January, 1917.

Manila, P. I., December 17th, 1916.

SHERMAN MORELAND,
Associate Justice of the Supreme Court
of the Philippine Islands.

Endorsed on cover: File No. 26,106. Philippine Islands Supreme Court. Term No. 639. The Board of Public Utility Commissioners, appellant and plaintiff in error, vs. Compañia General de Tabacos de Filipinas. Filed August 20th, 1917. File No. 26,106.

In the Supreme Court of the United States.

October Term, 1918.

No. 253

The Board of Public Utility Commissioners,
Appellant and Plaintiff in Error,

v.

The Compañia General de Tabacos de Filipinas,
Appellee and Defendant in Error.

BRIEF FOR THE BOARD OF PUBLIC UTILITY COMMISSIONERS, APPELLANT AND PLAINTIFF IN ERROR.

PRESS OF GIBSON BROS., INC., WASHINGTON, D. C.

SUBJECT INDEX.

PAGE

Statement 1

Assignment of Errors 8

POINT 1.—That section 16 of the Act No. 2307 of the Philippine Legislature providing that the Board shall have power, after hearing, upon notice, by order in writing, to require every public utility, as therein defined, to furnish annually a detailed report of finances and operations, in such form, and containing such matters as the Board may from time to time by order prescribe, is not invalid as constituting an attempted delegation of legislative power to the Board 9

An examination of the Act under review shows clearly that the contention of the appellee that the power conferred by the Act upon the Board of Public Utility Commissioners is legislative, and not administrative, is absolutely untenable 11

POINT 2.—That the question raised by appellee in its brief that the amendment of paragraph (*e*) of section 16 of Act No. 2307 by section 12 of Act No. 2694 of March 9, 1917, of the Philippine Legislature, served to abate the pending action, is wholly without merit 33

It is a general rule that a later Act which is merely supplemental to an earlier one, as in the case at bar, as by extending its provisions or giving additional remedy, does not impliedly repeal the earlier Act ... 37

And the repeal and simultaneous reenactment of substantially the same statutory provisions, *Great Northern Railway Company* v. *United States*, 208 U. S. 452, are to be construed not as an implied repeal of the original statute, but as a reenactment thereof 38

Conclusion 41

AUTHORITIES CITED.

	Page
Adams v. *Burdge*, 95 Wisconsin 390	30
Alexander v. *State*, 9 Ind. 337	35
Baltimore & P. R. Company v. *Grant*, 98 U. S. 398	40
Birdsall v. *Clark*, 73 New York 73	32
Blue v. *Beach*, 155 Ind. 121	11
Boyd v. *Bryant*, 35 Ark. 69	27
Brig Aurora, 7 Cranch 382	13
Bullock v. *Billheimer*, 175 Ind. 450	27
Buttfield v. *Stranahan*, 192 U. S. 471	14
Chicago, Milwaukee & St. Paul Ry. Co. v. *State Public Utilities Commission of Illinois*, 242 U. S. 333	11
Coyle v. *Met. Ins. Co.*, 8 Kulp, Pa. 169	37, 40
Dowling v. *Lancashire Insurance Company*, 92 Wisconsin 63	31
Great Northern Railway Company v. *United States*, 208 U. S. 452	38, 40
Holden v. *Minnesota*, 137 U. S. 483	38, 40
Interstate Commerce Commission v. *Goodrich Transit Company*, 224 U. S. 194	18
Kansas City Southern Railway Company v. *United States*, 231 U. S. 423	21
King v. *Concordia Fire Insurance Company*, 140 Michigan 258	32
Louisville, Henderson & St. Louis Railway Company, 155 Kentucky 396	24
Manufacturers' Light & Heat Co. v. *Ott, et al.*, 215 Fed. 940	11
Merchants' Exchange of St. Louis v. *Knott*, 212 Mo. 616	30
Miller v. *N. Y.*, 109 U. S. 385	11
Moore v. *Kenockee*, 75 Mich. 332	38
Northern Railway Company v. *Manchester & N. W. R. R. Co.*, 66 N. H. 560	27
O'Neil v. *American Fire Insurance Company*, 166 Penn. St. 72	32

PAGE

Re Kollock, 165 U. S. 537 14
Reed v. *Dunbar, Secretary of State*, 41 Ore. 509 11
Rio Grande County v. *Lewis*, 28 Colo. 378 23
St. Louis, Iron Mountain & Southern Railway Company v. *Taylor*, 210 U. S. 281 18
Smith v. *People*, 47 N. Y. 330 38
State v. *Chicago, Milwaukee & St. Paul Railway Company*, 38 Minnesota 281 28
State v. *Martin*, 68 Vt. 93 ..... 37, 40
State v. *Miller*, 58 Ind. 399 ..... 36, 40
State ex rel Stone v. *Vernon County, Ct.*, 53 Mo. 128 38
Union Bridge Co. v. *U. S.*, 204 U. S. 364 ..... 11, 16
U. S. v. *Grimaud*, 220 U. S. 506 ..... 11, 17
United States v. *Peggy*, 1 Cranch. 102 39
Wayman v. *Southard*, 10 Wheat. 1 13

In the Supreme Court of the United States.

OCTOBER TERM, 1918.

THE BOARD OF PUBLIC UTILITY COMMISSIONERS, *Appellant and Plaintiff in Error.*	No. 253
v.	
THE COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, *Appellee and Defendent in Error.*	

BRIEF FOR THE BOARD OF PUBLIC UTILITY COMMISSIONERS, APPELLANT AND PLAINTIFF IN ERROR.

STATEMENT.

This case is here on writ of error and appeal from the Supreme Court of the Philippine Islands for the review of the judgment of that court vacating and setting aside an order of the Board of Public Utility Commissioners of those Islands. (R. p. 27.)

On December 19, 1913, the Philippine Legislature enacted Act No. 2307, as amended by Act No. 2362, entitled "An Act creating a Board of Public Utility Commissioners and prescribing its duties and powers, and for other purposes." By this Act the Board of Public Utility Commissioners was created and vested with authority to supervise and regulate public utilities. .

Section 14 provides that:

> "The Board shall have general supervision and regulation of, jurisdiction and control over, all public utilities, and also over their property, property rights, equipment, facilities and franchises so far as may be necessary for the purpose of carrying out the provisions of this Act. The term 'public utility' is hereby defined to include every individual, copartnership, association, corporation or joint stock company, whether domestic or foreign, their lessees, trustees or receivers appointed by any court whatsoever, that now or hereafter may own, operate, manage or control within the Philippine Islands any common carrier, railroad, street railway, traction railway, steamboat or steamship line, shipyard, marine railway, marine repair shop, ferry, freight or any other car service, public warehouse, ice refrigeration, cold storage, canal, express, subway, pipe line, gas, electric light, heat, power, water, oil, sewer, telephone, wire or wireless telegraph system, plant or equipment, for public use."

Section 15 of said Act provides in part:

"The Board shall have power:

"(*a*) To investigate, upon its own initiative, or upon complaint in writing, any matter concerning any public utility as herein defined.

"(*b*) From time to time to appraise and value the property of any public utility as herein defined, whenever in the judgment of said Board it shall be necessary so to do, for the purpose of carrying out any of the provisions of this Act, and in making such valuation the Board may have access to and use any books, documents, or records in the possession of any department, bureau, office, or board of the Government of the Philippine Islands or any political subdivision thereof.

"(*c*) After hearing, upon notice by order in writing, to fix just and reasonable individual rates, joint rates, tolls, charges, or schedules thereof, as well as commutation, mileage, and other special rates which shall be imposed, observed, and followed thereafter by any public utility as herein defined, whenever the Board shall determine any existing individual rate, joint rate, toll, charge, or schedule thereof or commutation, mileage, or other special rate to be unjust, unreasonable, insufficient, or unjustly discriminatory or preferential.

"(*d*) To require every public utility as herein defined to file with it complete schedules of every classification employed and of every

individual or joint rate, toll, fare or charge made, charged or exacted by it for any product supplied or service rendered within the Philippine Islands, as specified in such requirement.

"(*e*) After hearing, by order in writing, to fix just and reasonable standards, classifications, regulations, practices, measurements, or service to be furnished, imposed, observed, and followed thereafter by any public utility as herein defined."

Section 16 of said Act provides in part:

"The Board shall have power, after hearing, upon notice, by order in writing, to require every public utility as herein defined:

"(*a*) To comply with the laws of the Philippine Islands and with any provincial resolution or municipal ordinance relating thereto and to conform to the duties imposed upon it thereby or by the provisions of its own charter, whether obtained under any general or special law of the Philippine Islands.

"(*b*) To furnish safe, adequate and proper service and to keep and maintain its property and equipment in such condition as to enable it to do so.

"(*c*) To establish, construct, maintain, and operate any reasonable extension of its existing facilities, where, in the judgment of said Board such extension is reasonable and practicable and will furnish sufficient business to justify

the construction and maintenance of the same, and when the financial condition of the said public utility reasonably warrants the original expenditure required in making and operating such extension.

"(*d*) To keep its books, records, and accounts so as to afford an intelligent understanding of the conduct of its business and to that end require every such public utility of the same class to adopt a uniform system of accounting. Such system shall conform to any system approved and confirmed by the Auditor for the Philippine Islands.

"(*e*) To furnish annually a detailed report of finances and operations, in such form and containing such matters as the Board may from time to time by order prescribe. * * *"

On June 7, 1915, by virtue of the authority contained in said Act, the Board of Public Utility Commissioners issued and caused to be served upon the appellee, the Compañia General de Tabacos de Filipinas, an order to show cause on or before June 30, 1915, why it should not be required to furnish annually on or before March first of each year a detailed report of finances and operations in the form and containing the matters indicated in the model annual report, a copy of which accompanied the order. (R. pp. 8, 11.)

This was one of many similar orders issued by the Board against all common carriers known to be

transacting business by water within the Philippine Islands. (R., p. 9.) On June 30, 1915, the appellee filed its answer, objecting to the jurisdiction of the Board upon the grounds (*a*) that the Board was without authority to require such annual reports, and (*b*) that the requirements of the proposed annual reports were unreasonable and unduly burdensome. It was not contended that the appellee was not a public utility within the meaning of the statute. On the day set for the hearing, the appellee appeared with counsel and produced testimony from which the Board found, in its decision September 20, 1915, that the appellee's public utility operated various lines of steamships within the Philippine Islands, and consequently was within the jurisdiction of the Board, and that it employs a system of accounting prescribed by its board of directors in Barcelona, and that the financial balances of the company's business were prepared there and not in the Philippine Islands. The Board also found that it was within the power of the appellee to furnish all the information required with reasonable completeness and accuracy, and that the same was necessary to enable the Board properly to discharge its duty, and in its decision directed that:

> "The respondent is therefore ordered to prepare annually on or before March first of each year a detailed report of finances and operations of such vessels as are operated by

> it as a common carrier within the Philippine Islands, in the form and containing the matter indicated in the model of annual report which accompanied the order to show cause herein." (R. p. 11.)

On September 25, 1915, the defendant filed in the Supreme Court of the Philippine Islands its petition for a judicial review, as provided for in section 37 of said Act No. 2307, alleging that:

> "Petitioner is dissatisfied with the said decision of the respondent Board upon the ground that the same is unreasonable and unduly burdensome and that the requirements thereof are beyond the scope of the lawful authority of the respondent Board. (R. p. 2.)

On March 8, 1916, the Supreme Court of the Philippine Islands granted an order setting aside the order of the Board of Public Utility Commissioners (R., p. 27), and in its opinion and as ground for its action held that paragraph (*e*) of section 16 of Act No. 2307, providing that:

> "The Board shall have power, after hearing, upon notice, by order in writing, to require every public utility as herein defined: * * * (*e*) To furnish annually a detailed report of finances and operations, in such form, and containing such matters as the Board may from time to time by order prescribe,"

was void as constituting an attempted delegation of legislative power to the Board. (R. pp. 10, 11.) From the judgment of the court the appellant and plaintiff in error has presented its appeal and writ of error. (R. pp. 27, 28.)

ASSIGNMENT OF ERRORS.

I. The court erred in setting aside the order of the Board of Public Utility Commissioners of the Philippine Islands.

II. The court erred in holding that the provision of section 16, subsection (*e*), of Act No. 2307 of the Philippine Legislature, is in violation of the Act of Congress of July 1, 1902.

By the assignments of error the appellant presents the following contentions:

POINT I.

That section 16 of the Act No. 2307 of the Philippine Legislature providing that the Board shall have power, after hearing, upon notice, by order in writing, to require every public utility as herein defined, to furnish annually a detailed report of finances and operations, in such form, and containing such matters as the Board may from time to time by order prescribe, is not invalid as constituting an attempted delegation of legislative power to the Board.

POINT II.

That the question raised by the appellee in its brief that the amendment of paragraph (e) of section 16 of Act No. 2307 by section 12 of Act No. 2694 of the Philippine Legislature enacted March 9, 1917, serves to abate the pending action, is wholly without merit.

ARGUMENT.

POINT I.

That section 16 of the Act No. 2307 of the Philippine Legislature providing that the Board shall have power, after hearing, upon notice, by order in writing, to require every public utility as therein defined, to furnish annually a detailed report of finances and operations, in such form, and containing such matters as the Board may from time to time by order prescribe, is not invalid as constituting an attempted delegation of legislative power to the Board.

The Board of Public Utility Commissioners of the Philippine Islands was created by Act No. 2307 of the Philippine Legislature and vested with powers prescribed for similar boards in the United States. The appellee is a public utility as defined by the Act, and is subject to the supervision and regulation delegated to the Board, and it is not denied that the appellee is such public utility within the terms of the Act.

Under the Act of Congress approved July 1, 1902, the Philippine Organic Act, the legislative authority of the Philippine Islands was authorized to adopt rules and regulations under which provincial and municipal governments might grant public utilities. The pertinent portions of section 74 relating thereto are as follows:

> "That the Government of the Philippine Islands may grant franchises, privileges, and concessions, including the authority to exercise the right of eminent domain for the construction and operation of works of public

> utility and service, and may authorize said works to be constructed and maintained over and across the public property of the United States, including streets, highways, squares, and reservations, and over similar property of the Government of said Islands, and may adopt rules and regulations under which the provincial and municipal governments of the islands may grant the right to use and occupy such public property belonging to said provinces or municipalities. * * * That all franchises, privileges, or concessions granted under this Act shall forbid the issue of stock or bonds except in exchange for actual cash, or for property at a fair valuation, equal to the par value of the stock or bonds so issued; shall forbid the declaring of stock or bond dividends, and, in the case of public-service corporations, shall provide for the effective regulation of the charges thereof, for the official inspection and regulation of the books and accounts of such corporations, and for the payment of a reasonable percentage of gross earnings into the treasury of the Philippine Islands or of the province or municipality within which such franchises are granted and exercised."

The authority thus conferred upon the legislative body of the Philippine Islands to exercise control over public utilities was, by it, legally delegated to the Board of Public Utility Commissioners by Act No. 2307. Accordingly, in the case at bar the Commis-

sioners were authorized by this Act to promulgate rules and regulations for carrying out the provisions of the law in question. That it was within the province of the legislature to confer this power is well established.

There are no constitutional objections arising out of the doctrine of the separation of the powers of the government to the creation of administrative bodies within certain limitations to adopt rules and regulations and authorize them to see that the legislative will, expressed in statutory form, is carried out by the persons and corporations over whom such boards may be given administrative powers.

Miller v. *N. Y.*, 109 U. S. 385.
Union Bridge Co. v. *U. S.*, 204 U. S. 364.
U. S. v. *Grimaud*, 220 U. S. 506.
Blue v. *Beach*, 155 Ind. 121.
Reed v. *Dunbar, Secretary of State*, 41 Ore. 509.
Chicago Milwaukee & St. Paul Ry. Co. v. *State Public Utilities Commission of Illinois*, 242 U. S. 333.
Manufacturers' Light & Heat Co. v. *Ott, et al.*, 215 Fed. 940.

An examination of the Act under review shows clearly that the contention of the appellee that the power conferred by the Act upon the Board of Public Utility Commissioners is legislative, and not administrative, is absolutely untenable.

The plain mandate of the statute is that the Board shall have power, after hearing, upon notice, by order in writing, to require the public utility to furnish a detailed report of finances and operations, in such form, and containing such matters as the Board may from time to time by order prescribe. It in terms marks out the scope of the report, pointing out that it shall be a detailed report of finances and operations, and limits the activities of the Board to prescribing the form in which the report shall be made, and the determining of the matters to be contained therein, which in the judgment of the Board shall constitute a detailed report of the "finances and operations" as provided by the statute. Thus, it is seen that the duty of the Board is confined merely to prescribing the form of the report, and determining in what a detailed report of finances and operations shall consist. In pursuance of the authority thus conferred by the statute the Board directed the appellee to furnish a detailed report of its finances and operations in the form and containing the matters indicated in the model form (R. pp. 8, 11), the Board having found that it was within the power of the appellee to furnish the information required with reasonable completeness and accuracy, and that the same was necessary to enable the Board properly to discharge the legal duty imposed upon it. That the duty thus imposed by the statute was administrative

and not legislative, we submit, is not open to serious controversy.

In the early case of the *Brig Aurora*, 7 Cranch 382, involving the question whether Congress could make the revival of a law (which had ceased to be in force) depend upon the existence of certain facts to be ascertained by the President and to be set forth by him in a proclamation, the court in passing upon the question, said:

> "We can see no sufficient reason why the legislature should not exercise its discretion in reviving the Act of March 1, 1809, either expressly or conditionally, as their judgment should direct."

In *Wayman* v. *Southard*, 10 Wheat. 1, Chief Justice Marshall, delivering the judgment of the court, held that although Congress could not delegate to the courts or to any other tribunal powers strictly and exclusively legislative, and although the line had not been strictly drawn that separates the important subjects which must be entirely regulated by the legislature itself from those of less interest, in which a general provision may be made and powers given to those who are to act under such general provisions to fill up the details, yet Congress may certainly delegate to others powers which the legislature may rightly exercise itself and the maker of the law may commit something to the discretion of other departments.

In *re Kollock*, 165 U. S. 537, this court held that an Act imposing a tax upon, and regulating the manufacture, sale, etc., of oleomargarine requiring the packages thereof to be marked and branded and prohibiting the sale of packages that were not so marked and branded by the owner, was not, because it left the matter of describing the marks, brands and stamps, and the changing of the form and style thereof to the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, an unconstitutional delegation of the legislative power. This case presents features similar to those in the case under consideration and the principle applied by the court is controlling in the case at bar. There can be no legal distinction between the power given to prescribe the style and form of the stamps and that given to prescribe the form of the report and determining what shall constitute a detailed report of finances and operation.

In *Buttfield* v. *Stranahan*, 192 U. S. 471, this court held valid a statute conferring certainly as large a measure of discretionary authority as that given by the statute under review. In this case Congress granted to the Secretary of the Treasury the authority to establish standards, upon recommendation of a board of experts, by which should be determined the purity, quality and fitness for consumption of teas sought to be imported into the United States and

to exclude from importation such teas as should not satisfy these requirements as provided by law. In passing upon the question the court said:

> "The case is within the principle of *Field* v. *Clark*, 143 U. S. 649, where it was decided that the third section of the tariff act of October 1, 1890, was not repugnant to the Constitution as conferring legislative and treaty-making power on the President, because it authorized him to suspend the provisions of the Act relating to the free introduction of sugar, molasses, coffee, tea and hides. We may say of the legislation in this case, as was said of the legislation considered in *Field* v. *Clark*, that it does not, in any real sense, invest any administrative officials with the power of legislation. * * *
>
> "Whether or not the Secretary of the Treasury failed to carry into effect the expressed purpose of Congress and established standards which operated to exclude teas which would have been entitled to admission had proper standards been adopted, is a question we are not called upon to consider. The sufficiency of the standards adopted by the Secretary of the Treasury was committed to his judgment, to be honestly exercised, and if that were important there is no assertion here of bad faith or malice on the part of that officer in fixing the standards, or on the part of the defendant in the performance of the duties resting on him."

In *Union Bridge Company* v. *United States*, 204 U. S. 364, the general principle relating to the delegation of legislative power was again extensively considered, and the court in restating the settled doctrine that the legislature may delegate discretionary power to executive officials or boards said:

> "If the principle for which the defendant contends received our approval, the conclusion could not be avoided that executive officers, in all the departments, in carrying out the will of Congress, as expressed in statutes enacted by it, have, from the foundation of the National Government, exercised and are now exercising powers, as to mere details, that are strictly legislative or judicial in their nature. This will be apparent upon an examination of the various statutes that confer authority upon Executive Departments in respect of the enforcement of the laws of the United States. Indeed, it is not too much to say that a denial to Congress of the right, under the Constitution, to delegate the power to determine some fact or the state of things upon which enforcement of its enactment depends, would be 'to stop the wheels of government' and bring about confusion, if not paralysis, in the conduct of the public business."

In *United States* v. *Grimaud*, 220 U. S. 506, this court announcing the same doctrine said:

> "From the beginning of the Government various Acts have been passed conferring upon executive officers power to make rules and regulations—not for the government of their departments, but for administering the laws which did govern. None of these statutes could confer legislative power. But when Congress had legislated and enacted its will, it could give to those who were to act under such general provisions 'power to fill up the details' by the establishment of administrative rules and regulations, the violation of which could be punished by fine or imprisonment fixed by Congress, or by penalties fixed by Congress or measured by the injury done.
>
> "Thus it is unlawful to charge unreasonable rates or to discriminate between shippers, and the Interstate Commerce Commission has been given authority to make reasonable rates and to administer the law against discrimination. *Int. Com. Comm.* v. *Ill. Cent. R. R.*, 215 U. S. 452; *Int. Com. Comm.* v. *Chicago, Rock Island R. R.*, 218 U. S. 88. Congress provided that after a given date only cars with drawbars of uniform height should be used in interstate commerce, and then constitutionally left to the Commission the administrative duty of fixing a uniform standard."

In line with the principle announced in the preceding case this court in the case of *St. Louis, Iron Mountain & Southern Railway Company* v. *Taylor*, 210 U. S. 281, held that legislative power had not been granted to the American Railway Association and the Interstate Commerce Commission by the Safety Appliance Act of 1893, which forbids the use of all such cars as have drawbars of uniform height, and empowers the Association to fix and the Commission to declare the standard.

So too, in the instant case, Congress has provided that a detailed report of finances and operations of the utility shall be furnished, and empowered the Board to declare of what such detailed report shall consist.

In the case of the *Interstate Commerce Commission* v. *Goodrich Transit Company*, 224 U. S. 194, involving a question very similar to that under review, this court held that leaving to the Interstate Commerce Commission the carrying out of details in the exercise of its discretion under section 20, of the Act of February 4, 1887, as amended by the Act of June 29, 1906, to prescribe a uniform system of accounting and bookkeeping for the carriers subject to that Act, did not render such section invalid as a delegation of legislative authority. The orders of the Commission complained of comprise: first, an order prescribing the method of accounts and bookkeeping as to the operating expenses of the carriers; and, second, an

order requiring the report of the carriers respecting their corporate organization, financial condition, etc. This court in holding that the power conferred by the statute was not legislative said:

> "Furthermore, it is said that such construction of section 20 makes it an unlawful delegation of legislative power to the Commission. We can not agree to this contention. The Congress may not delegate its purely legislative power to a commission, but, having laid down the general rules of action under which a commission shall proceed, it may require of that commission the application of such rules to particular situations and the investigation of facts, with a view to making orders in a particular matter within the rules laid down by the Congress. This rule has been frequently stated and illustrated in recent cases in this court, and needs no amplification here."

It is submitted that this case is directly in point with the case at bar. All the Philippine statute attempts to do is to confer power upon the Board to prescribe the form in which the detailed report shall be made, and the matters which the Board shall regard as constituting a detailed report of the finances and operations of the utility, and this discretionary power, under the authority of the above case, is administrative and not legislative. The rules prescribed by the Interstate Commerce Commission in

the *Goodrich* case were not within the limits of a more clearly defined or restricted power than in the case at bar. While the appellee in its brief attempts to differentiate this case from the case at bar, nevertheless it fails to point out any real distinction in principle between the cases. In the case under consideration it will be observed that the legislature, as stated in the decision of the Board of Public Utility Commissioners,

> "has prescribed the information that may be required in a general way. That information must be with regard to finances and operations. The Board, however, is authorized to determine what information with regard to finances and operations it may require and the form in which that information shall be furnished. * * * A part of the duty of this Board is to collect information which will be useful to it in the performance of its administrative duties and which will be to the public in its dealings with the Board and with public utilities. The power to determine what information shall be furnished and the form in which it shall be furnished within the general scope of the information which the Board is authorized to obtain under the statute is not a legislative power." (R. p. 11.)

In the brief of the appellee, page 16, it is claimed that the statute is invalid since it leaves to the Board the power not only to determine what the detailed report shall contain, but whether such report might be

required or not. Appellee then proceeds to admit that the Board, under the authority of the last cited case, was vested with the power to decide whether or not the report should be required, but goes on to argue, however, that it was without the power to determine what the reports shall contain. The vice of the appellee's argument lies in the fact that it overlooks the provision of the statute, pointing out that a detailed report of the finances and operations shall be furnished and leaving only to the Board the discretionary power to determine within the scope of the statute of what the mere details shall consist. The exercise of this power by the Board is merely administrative and can not, under the established doctrine of the cases, be held to be legislative.

In the more recent case of *Kansas City Southern Railway Company* v. *United States*, 231 U. S. 423, this court held that legislative power is not unconstitutionally delegated to the Interstate Commerce Commission under the Commerce Act authorizing the Commission to prescribe a uniform system of accounting and bookkeeping for the carrier subject to that Act, even though such uniformity of requirements may control or tend to control the conduct of the carrier in its capacity as a public servant engaged in interstate commerce. The statutory enactment which was sought to be declared null and void in this case upon the ground that it was an unconstitutional

delegation of legislative power, provides among other things:

> "That the Commission is hereby authorized to require annual reports from all common carriers subject to the provisions of this Act, and from the owners of all railroads engaged in interstate commerce as defined in this Act, and to prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the Commission may need information."

It also provides that:

> "The Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to the provisions of this Act, including the accounts, records, and memoranda of the movement of traffic as well as the receipts and expenditures of moneys."

In sustaining the validity of the statute this court said:

> "There is here no unconstitutional delegation of legislative powers. The reasoning adopted in *Interstate Com. Com.* v. *Goodrich Transit Co.*, 224 U. S. 194, 210, etc., is controlling. And since, as just shown, uniformity in accounting is dependent upon the adoption and enforcement of precise classification, the authority to define the terms of the classifica-

> tion necessarily follows. It amounts, after all, to no more than laying down the general rules of action under which this Commission shall proceed, and leaving it to the Commission to apply those rules to particular situation and circumstances by the establishment and enforcement of administrative regulations."

This case is also in point with the case at bar.

The statute under review and the authority conferred by it, to use the language of the court in the above case, "amounts after all, to no more than the laying down of general rules of action under which the Commission shall proceed, leaving it to the Commission to apply those rules to particular situations and circumstances by the establishment and enforcement of administrative regulations." Thus, it is seen that the trend of judicial thought is that modern extension of control over public utilities brought about by increasing complexity of modern government has rendered necessary the delegation to administrative agents, and particularly to boards or commissions, of wider spheres of discretionary action.

In *Rio Grande County* v. *Lewis*, 28 Colo. 378, in announcing the principle here contended for, the court said:

> "Discretion, as applied to public functionaries, means the power or right of acting officially, according to what appears just and proper under the circumstances. Courts will

> not interfere with the exercise of such discretionary authority unless it has been abused."

Involving the same principle is the case of *Louisville, Henderson & St. Louis Railway Company*, 155 Kentucky 396, where the court in passing upon the question of whether a statute forbidding the employment of minors in dangerous occupations, and delegating to health officers the power of determining what occupations are dangerous, was legislative in character, said:

> "Nor is the statute, or rather the clause in question, open to the objection that it is an unauthorized delegation of legislative authority. There are many laws enacted by the legislative department of the State containing administrative features that it is necessary to confide to agents selected by the legislature. If the legislature could not delegate to subordinate officers the right to determine the administrative provisions of a law, the result would be that many useful laws would be entirely inoperative because the legislature could not reasonably or fairly anticipate the various conditions to which it might be necessary to apply them. For example, we have in this State laws intended to protect the health of the people, and the administration of these laws is committed to boards of health, who are invested with a large measure of discretion. It is left to them to say what diseases

may be quarantined and for how long and to say what means and methods shall be adopted to prevent the spread of disease.

"We have a railroad commission that exercises much authority under the Act creating it. We have statutes regulating dentistry, medicine, pharmacy, barbering, embalming, and other things that concern the health of the people. We have also statutes regulating banking, insurance, and horse racing. These various statutes are administered by boards to whom the legislature has confided certain powers relating to the enforcement of these laws. * * *

"When the legislature confided to the physician or officer mentioned in this Act the right to say whether an employment was dangerous or not, it merely conferred upon this officer authority to find the existence of a fact, and upon his finding the legislative Act becomes operative."

Willoughby in his work on the Constitution, volume II, discusses very illuminatingly the question under consideration. In section 775 he says:

"The qualifications to the rule prohibiting the delegation of legislative power which have been earlier adverted to are those which provide that the real law-making power may not be delegated, a discretionary authority may be granted to executive and administrative authorities: (1) To determine when and how

the powers conferred are to be exercised; and (2) to establish administrative rules and regulations, binding both upon their subordinates and upon the public, fixing in detail the manner in which the requirements of the statutes are to be met, and the rights therein created to be enjoyed.

"The principle which permits the legislature to provide that the administrative agent may determine when the circumstances are such as require the application of a law is defended upon the ground that at the time this authority is granted, the rule of public policy, which is the essence of the legislative Act, is determined by the legislature. * * * Thus in Locke's Appeal [72 Pa. St. 491] the court says: 'To assert that a law is less than a law, because it is made to depend on a future event or Act, is to rob the legislature of the power to act wisely for the public welfare whenever a law is passed relating to a state of affairs not yet developed, or to things future and impossible to fully know. The court can not delegate its power to make a law, but it can make a law to delegate a power to determine some fact or state of things upon which the law makes, or intends to make, its own action depend. To deny this would be to stop the wheels of government. There are many things upon which wise and useful legislation must depend which can not be known to the law-making power, and must, there-

> fore, be a subject of inquiry and determination outside of the halls of legislation.' "

Supporting the position of appellant are the cases of *Northern Railway Company* v. *Manchester & N. W. R. R. Co.*, 66 N. H. 560; *Boyd* v. *Bryant*, 35 Ark. 69; and *Bullock* v. *Billheimer*, 175 Ind. 450. In the first of these the law authorized the union of two railroad companies and empowered the united company to discontinue such portions of the road as the directors should deem necessary. In holding that this was not an unconstitutional delegation of legislative power, the court said:

> "Although the question whether any part of the road should be constructed was submitted to the company, there was no delegation of legislative power."

In the second case, a proceeding was brought by a majority of the residents of the town of New Edinburgh to prevent the sale of liquor within three miles of a general school in that town. The law under which the order was granted was attacked on the ground that it was unconstitutional because it was left to take effect and operate in the school districts at the option of a majority of the adult residents. The court in holding the Act constitutional said:

> "The legislature can not delegate its power to make laws, but it can make a law to delegate a power to determine some fact or state

of things upon which the law makes, or intends to make, its own action depend."

In the last case the Supreme Court of Indiana said:

"The Act of 1909 is not ineffective or unconstitutional by reason of provision for an advisory committee to act with the director of the experiment station. If they perform any duty, it is a public one, in which the public are interested. They perform no increased functions of a corporate character, for the reason that their duty ceases with their advice. It is no objection to a law that persons may be elected to advise as to, or even perform, a duty in which the public are interested, or that the mode of exercising the power is referred to those who may be affected by its operation."

Again in *State* v. *Chicago, Milwaukee & St. Paul Railway Company*, 38 Minnesota 281, the Supreme Court of Minnesota in dealing with the subject of what powers may be conferred upon administrative boards or commissions said:

"Our legislature has gone a step further than most others, and invested our commission with full power to determine what rates are equal and reasonable in each particular case. Whether this was wise or not is not for us to say; but in doing so we can not see that they have transcended their constitutional authority. They have not delegated to the com-

> mission any authority or discretion as to what the law shall be, which would not be allowable, but have merely conferred upon it an authority and discretion, to be exercised in the execution of the law, and under and in pursuance of it, which is entirely permissible. The legislature itself has passed upon the expediency of the law, and what it shall be. The commission is intrusted with no authority or discretion upon these questions. It can neither make nor unmake a single provision of law. It is merely charged with the administration of the law, and with no other power. Whether the charges of a railway in any particular case are or are not equal and reasonable is a fact left by the law for them to determine."

It is submitted that under the settled doctrine of the cases, the power vested in the Board of Public Utility Commissioners to determine the question of what data should be included in a detailed report of the finances and operations of the public utility, was a purely discretionary power entirely lacking in any of the essentials of legislative power, and one which it was well within the sphere of the legislature to grant.

Counsel for appellee has cited a number of cases which he claims supports the proposition advanced by the appellee that the Act in question was void as constituting an unauthorized delegation of legislative power. An examination of these cases indicates

clearly that they in no wise control the question involved in this case. For example, in the case of *Adams* v. *Burdge* cited by appellant, 95 Wisconsin 390, and on which it relies, there was no statutory authority for the regulation promulgated by the Board of Health excluding from the public schools all children who had not been vaccinated. The court said:

> "There is no statute in this State authorizing compulsory vaccination, nor any statute which requires vaccination as one of the conditions of the right or privilege of attending the public schools; and, in the absence of any statute we think it can not be maintained that the rule relied on is a valid exercise of the rightful powers of the State board of health."

Obviously in the absence of a statute requiring vaccination as a condition of the right to attend public schools the board of health was without the power to promulgate a rule excluding from the public schools a child upon the ground that the child had not been vaccinated.

It was the delegation to the Commission of limitless powers that was declared unconstitutional in the case of *Merchants' Exchange of St. Louis* v. *Knott*, 212 Mo. 616, cited by appellee, in which the court used the language:

> "The foregoing grant of power is given without statutory landmark, compass, map,

> guide post, or corner stone, * * * indicative of any certain intendment of the legislative mind, beyond the mere grant."

This can not be said of the grant of power to the Public Utility Commissioners of the Philippine Islands. There is statutory landmark plainly pointed out in the statute under review. It provides that the report required by the Board shall be a *detailed report of the finances and operations of the utility.*

The case of *Dowling* v. *Lancashire Insurance Company*, 92 Wisconsin 63, cited by the appellee, involved the validity of an Act of the legislature providing that the insurance commissioner shall, within sixty days of the passage of the Act, prepare, approve and adopt a printed form in blank of a contract or policy of fire insurance, together with such provisions, agreements or conditions as may be endorsed thereon or added thereto and form a part of such contract or policy; and such form shall, as nearly as the same can be made applicable, conform to the type and form of the New York standard fire insurance policy, so-called. The commissioner prepared, approved and adopted a policy which contained the condition that the policy shall be void,

> "If the subject of insurance be personal property, or be or become encumbered by a chattel mortgage,"

and also the stipulation that,

> "No officer, agent or other representative of the

company shall have power to waive any provision or condition of this policy except such as by the terms of this policy may be the subject of agreement endorsed hereon or added hereto, and as to such provisions and conditions, no officer, agent or representative shall have such power or be deemed or held to have waived such provisions or conditions unless such waiver, if any, shall be written upon or attached hereto."

In providing these conditions the insurance commissioner was obviously functioning in the legislative field and was not acting administratively. The facts in this case, and the reason underlying the decision, show that the case bears no analogy whatever to the case at bar.

The cases of *King* v. *Concordia Fire Insurance Company*, 140 Michigan 258, and *O'Neil* v. *American Fire Insurance Company*, 166 Penn. St. 72, cited by appellee, involve a similar state of facts as in the preceding case, and the court very properly held that the power attempted to be exercised was legislative.

In the case of *Birdsall* v. *Clark*, 73 New York 73, cited by appellee, brief, page 11, the facts were that the charter of the city of Binghampton, New York, provided that the building and maintaining of sidewalks should be done at the expense of adjoining premises, and if such owner did not do this work,

upon proper notice, the Common Council shall cause it to be done. The Common Council passed a resolution directing the Superintendent of Streets, when the owner neglects to do the work by the time specified, to cause the same to be done. All that was held in the case was that the Common Council was without authority to delegate the power which it had.

We repeat that the cases cited by appellee are not in point and do not in any wise aid in the solution of the question here presented.

POINT II.

That the question raised by appellee in its brief that the amendment of paragraph (e) of section 16 of Act No. 2307 by section 12 of Act No. 2694 of March 9, 1917, of the Philippine Legislature, served to abate the pending action is wholly without merit.

The claim of the appellee is that the statute in question has been wholly repealed and that therefore the questions presented have become purely academic. It will be remembered that the original section 16, subsection (*e*), provides that:

> "The Board shall have power, after hearing, upon notice in writing, to require every public utility as herein defined: * * * (*e*) To furnish annually a detailed report of finances and operations, in such form and containing such matter as the Board may from time to time prescribe."

By section 12 of the Act No. 2694 of the Philippine Legislature enacted March 9, 1917, paragraph (*e*) was amended to read as follows:

> "Subsection (*e*) of section sixteen of Act numbered twenty-three hundred and seven is hereby amended to read as follows:
>
> '(*e*) To make specific answers with regard to any point on which the Commission requires information, and to furnish annual reports of finances and operations. Such reports shall set forth in detail the capital stock issued, the amounts of said capital stock paid up and the form of payment thereof; the dividends paid, the surplus, if any, and the number of stockholders; the consolidated and pending obligations, and the interest paid thereon, the cost and value of the property of the carrier, concessions, or franchises and equipments; the number of employees and salaries paid to each class; the accidents to passengers, employees, and other persons, and the causes thereof; the annual expenditures on improvements, the manner of their investment and nature of such improvements; the receipts and profits in each of the branches of the business and of whatever source; the operating and other expenses; the balance of profits and losses; and a complete statement of the annual financial operations of the carrier, including an annual balance sheet. Such reports shall also contain any information which the Commission

> may require concerning freight and passenger rates, or agreements, compromises or contracts affecting the same. Said reports shall cover a period of twelve months, ending on December thirty-first of each year, and shall be sworn to by the officer or functionary of the public utility authorized therefor.' "

Thus it is seen that the first three lines of section 16 are not changed in any way and that the first four lines of subsection (*e*) as amended, contain the identical power slightly changed as to wording, contained in the original subsection (*e*). It is to be noted that the legislature in terms states that the Act in question is amended by the subsequent Act, and that it does not purport to repeal the former Act. The mere fact that the amended section provides specifically what shall be in the report does not make the amendment a repeal of the original section. It will be remembered that the Act which is amended conferred upon the Board the power to require a detailed report of the finances and operations of the public utility, while the amended Act provides in specific detail what shall be embraced in the report. The amendment therefore does not change the original law but simply adds something to it by pointing out specifically what the report which the public utility is required to furnish shall contain, and in such a case the amendatory law will not operate as a repeal of the former one. *Alexander* v. *State*, 9 Ind. 337;

State v. *Miller*, 58 Ind. 399. In the first case the appellant was prosecuted for violation of a law which required every justice of the peace at a stated time in each year, on going out of office, to pay over to the County Treasurer all the money he might have received on account of fines for the use of the public schools. This Act was subsequently revised and the contention was made that as the latter Act was a revision of the former, it repealed it by implication. The court in disposing of this contention, said:

> "It is clear that this was not a repeal. It was not so designed. It was simply an amendment. In *Cheezem* v. *The State* it was held that a reenactment in substance of a section of a former statute was not a repeal of it."

In the second case an indictment was returned against the defendant under a statute which made the stealing of goods of the valuation of five dollars grand larceny. While the indictment was pending the legislature enacted an Act amending the law, increasing the amount constituting grand larceny to fifteen dollars. The indictment was quashed in the lower court on the ground that the former Act had been repealed by the later legislation. In reversing the lower court the Supreme Court of Indiana said:

> "There is no express repeal of section 19 on which the indictment in this case is based. The amendment of a statute is not a repeal of it by implication, further than it renders the

> amended statute inconsistent in letter or spirit, or both, with the unamended statute. The amended statute in question is not inconsistent with the statute as it was before amendment, so far as it is applicable to the case under consideration. * * * It is clear to us, that the law-making power never intended the repeal of entire section 19, above mentioned, and that no rule of construction of statutes requires this court to hold that it is repealed."

It is a general rule that a later Act which is merely supplemental to an earlier one, as in the case at bar, as by extending its provisions or giving additional remedy, does not impliedly repeal the earlier Act. Coyle v. *Met. Ins. Co.*, 8 Kulp, Pa. 169; *State* v. *Martin*, 68 Vt. 93.

> "Where the repealing Act relates merely to matters of procedure and substitutes new forms or methods in place of the old, the action does not abate, nor is the validity of proceedings already taken affected; further proceedings in such a case are had, so far as possible, under the new law and where it does not apply are conducted in accordance with the old." 36 Cyc. 1229.

The amendment in question does not take away the authority of the Board to require a detailed report as to finances and operations. It reiterates and reenacts this authority and merely prescribes that

certain details shall be contained in the annual report. It points out only the method of procedure in the instant case, since the details particularly required in the amendment are all embraced in the comprehensive discretionary powers conferred by the original section. The mere defining of an authority legally delegated, which is the sole purpose of this amendment, can not operate to defeat actions pending under the statute which it amends. This is the principle enunciated by this court in *Holden* v. *Minnesota*, 137 U. S. 483, where it was said:

> "And it is equally clear that the provisions of an existing statute can not be regarded as inconsistent with a subsequent Act merely because the latter reenacts or repeats those provisions."

The amendment does not enlarge the scope of the Act which it amends, but contains substantially the same provisions; and where a statute reenacts substantially the same provisions the new statute is generally construed as a continuation of the old one and does not operate to abate an action pending at the time of its enactment. *Moore* v. *Kenockee*, 75 Mich. 332; *State ex rel Stone* v. *Vernon County*, 53 Mo. 128; *Smith* v. *People*, 47 N. Y. 330. *And the repeal and simultaneous reenactment of substantially the same statutory provisions, Great Northern Railway Company* v. *United States, 208 U. S. 452, are to*

be construed not as an implied repeal of the original statute but a reenactment thereof.

An examination of cases of *United States* v. *Peggy*, 1 Cranch. 102, and *Baltimore & P. R. Company* v. *Grant*, 98 U. S. 398, cited by appellee on page 7 of its brief are not out of harmony with the view advanced by the appellant. In the first of these cases it was held that a new treaty inconsistent with the old superseded the old and property seized under the former should be restored. In the other case a writ of error to reverse a judgment rendered against it for $2,250 by the Supreme Court of the District of Columbia was sued out by the railroad company at the time the judgment was rendered against it. Sections 846 and 847 of the Revised Statutes fixed the amount of the judgment necessary to appeal to this court from the District of Columbia court at $1,000, and this amount was subsequently raised to $2,500 by the Act of February 25, 1879. Section 5 of the latter Act provides:

> "All Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed."

This court in holding that it was without jurisdiction as the latter Act was inconsistent with the former and hence repealed it, said:

> "It is equally well settled that if a law confirming the jurisdiction is repealed without any reservation as to pending cases, all such cases fall with the law."

Thus, it is seen that these cases present no analogy to the question under review. They involve the principle of absolute repeal and lay down the doctrine that where a subsequent statute is inconsistent with the former one, the former must fall.

These cases do not present the question either of an amendment consistent with the former statute or the reenactment of substantially the same provisions of the former statute, and accordingly should not be regarded as in any wise controlling the question presented in the case at bar.

It is submitted that where either the former statute is amended, *Alexander* v. *State*, *supra*, *State* v. *Miller*, *supra*, *Coyle* v. *Met. Ins. Co.*, *supra*, *State* v. *Martin*, *supra*, or where the subsequent statute reenacts substantially the same provisions, *Holden* v. *Minnesota*, *supra*, *Great Northern Ry. Co.* v. *U. S.*, *supra*, it should be construed not as an implied repeal of the original statute but a reenactment thereof, and therefore would not operate to abate a pending action. The action, accordingly, does not abate whether the amendatory Act of March 9, 1917, be viewed either as an amendment of the Act of December 9, 1913, or as a substantial reenactment of said Act.

CONCLUSION.

It is respectfully submitted that the judgment of the Supreme Court of the Philippine Islands should be reversed.

Respectfully submitted,

EDWARD S. BAILEY,
Attorney for the Plaintiff in Error and Appellant.

March 3, 1919.

SEP 19 1917
JAMES D. MAHER
Clerk

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1917.

No. 253

THE BOARD OF PUBLIC UTILITY COMMISSIONERS,
Appellant and Plaintiff in Error,

v.

LA COMPAÑIA GENERAL DE TABACOS DE FILIPINAS,
Appellee and Defendant in Error.

BRIEF FOR THE APPELLEE AND DEFENDANT IN ERROR.

(26,106)

PRESS OF GIBSON BROTHERS, INC., WASHINGTON, D. C.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1917.

No. 639

THE BOARD OF PUBLIC UTILITY COMMISSIONERS,
Appellee and Plaintiff in Error,

v.

LA COMPAÑIA GENERAL DE TABACOS DE FILIPINAS,
Defendant in Error.

Brief for Appellee and Defendant in Error.

STATEMENT OF THE CASE.

This proceeding was commenced by a petition to the Supreme Court of the Philippine Islands, dated September 25, 1915, for the review and reversal of an order of the Philippine Board of Public Utility Commissioners, by which the petitioner, the Compañia General de Tabacos de Filipinas (hereinafter called the Company), was required to prepare and file with the respondent Board, annually, a detailed report relating to the operation of the vessels made use of by petitioner in the Philippines in its business as a common carrier by water of passengers and merchandise. (Rec., pp. 1 to 2, inclusive.) The respondent Board appeared and answered the Company's

petition (Rec., p. 3). After trial of the issues presented, held under the authority conferred by Sec. 37 of Act 2307 of the Philippine Legislature, the Supreme Court of the Philippine Islands, rendered its decision (Rec., pp. 3 to 7, inclusive), holding that the order complained of was void, in that the statute under which the respondent Board had acted was invalid as constituting an unauthorized attempt on the part of the legislature to delegate the legislative authority vested in it by Congress. The respondent Board thereupon sued out a writ of error and an appeal upon which the case has been carried to this Court.

STATEMENT OF THE FACTS.

Under date of June 7, 1915, the Philippine Board of Public Utility Commissioners (hereinafter called the Board) issued and caused to be served upon the company an order to show cause, on or before the 30th day of June, 1915, why it should not be required to file annually, on or before March 1 of each year, a detailed report of finances and operations in the form and containing the matters indicated in the model annual report which accompanied the order to show cause. (Rec., pp. 11 to 25, inclusive.) The printed record contains the full text of the order of the Board overruling the company's objections, with the annexed model form (Rec., pp. 9 to 25, inclusive) required.

Within the time prescribed by the order the Company made answer thereto (Rec., p. 8), opposing the requirements of the Board upon the grounds:

(*a*) That the Board was without authority to require such annual reports; and

(*b*) That the requirements of the proposed annual reports were unreasonable and unduly burdensome.

Upon the filing of the answer the case was set down for hearing before the Board, and at the time and place

designated the Company appeared by counsel and submitted evidence in support of the issues of fact raised by its answer.

Thereafter, on the 20th day of September, 1915, the Board made an order (Rec., pp. 9 to 11, inclusive) overruling the objections made by the Company in its answer to the order to show cause and requiring the Company on or before the first day of March of each year to file a detailed report of all its operations concerning all vessels used by it as a common carrier within the Philippines, in the form and containing the matters indicated in the model annual report which accompanied the order to show cause. The Company thereupon carried the case to the Supreme Court of the Philippine Islands by the procedure authorized by Section 37 of Act 2307 of the Philippine Legislature.

BRIEF OF THE ARGUMENT FOR THE DEFENDANT IN ERROR.

POINT ONE.—*During the pendency of this proceeding to review the judgment of the Court below the statute in question has been wholly repealed, without a saving clause as to pending matters, and the questions here presented by the plaintiff in error have therefore become purely academic.*

POINT TWO.—*Paragraph (e) of Section 16 of Act 2307 as it existed at the time of the commencement of the proceedings here in question was void as constituting an unauthorized delegation of legislative power to the Philippine Board of Public Utility Commissioners.*

POINT ONE.

DURING THE PENDENCY OF THIS PROCEEDING TO REVIEW THE JUDGMENT OF THE COURT BELOW THE STATUTE IN QUESTION HAS BEEN WHOLLY REPEALED, WITHOUT A SAVING CLAUSE AS TO PENDING MATTERS, AND THE QUESTIONS PRESENTED BY THE WRIT OF ERROR HAVE BECOME PURELY ACADEMIC.

At the time when the Board issued its order to show cause (Rec., p. 8), and when the Supreme Court of the Philippine Islands rendered its judgment with respect to the invalidity of the action of the Board in the premises, the statutory authority relied upon by the latter was to be found in sub-paragraph (*e*) of Section 16 of Act 2307 of the Philippine Legislature, which read as follows:

> SEC. 16. The Board shall have power, after hearing, upon notice, by order in writing, to require every public utility as herein defined: * * * (*e*) To

furnish annually a detailed report of finances and operations, in such form, and containing such matters as the Board may from time to time by order prescribe.

By Section 12 of Act 2694 of the Philippine Legislature, enacted March 9, 1917, and published in Volume 15 of the Philippine Official Gazette at pp. 697 to 700 inclusive of the issue of May 2, 1917, paragraph (3) of Section 16 of Act 2307 was amended by the elimination of the whole of the paragraph and the substitution therefor of a new paragraph reading as follows:

(*e*) To make specific answers with regard to any point on which the Commission requires information, and to furnish annual reports of finances and operations. Such reports shall set forth in detail the capital stock issued, the amounts of said capital stock paid up, and the form of payment thereof; the dividends paid, the surplus, if any, and the number of stockholders; the consolidated and pending obligations, and the interest paid thereon; the cost and value of the property of the carrier, concessions, or franchises and equipments; the number of employees and the salaries paid to each class; the accidents to employees, passengers, and other persons, and the causes thereof; the annual expenditures on improvements, the manner of their investment and nature of such improvements; the receipts and profits in each of the branches of the business and of whatever source; the operating and other expenses; the balance of profits and losses; and a complete statement of the annual financial operations of the carrier, including an annual balance sheet. Such reports shall also contain any information which the Commission may require concerning freight and passenger rates, or agreements, compromises, or contracts affecting the same. Such reports shall cover a period of twelve months, ending on December 31 of each year, and shall be sworn to by the officer or functionary of the public utility authorized therefor.

Paragraph (*e*) of Sec 16 of Act 2307, as it now stands amended, is copied, almost literally, from the Sec. 20 of the Act to Regulate Commerce, as amended by the Act of June 29, 1906 (Fed. Statutes Annotated, First Edition, Annual Supplement for 1909, p. 274). It is evident from its perusal that the Philippine Legislature has acquiesced in the decision of the Philippine Supreme Court and has adopted the policy of expressly determining what matters the Board may require public utilities subject to its jurisdiction to include in the reports which may be demanded of them. Had this amendment been in force when this proceeding was commenced the particular issue involved in this case could never have arisen. The effect of the amendment, so far as this case is concerned, must, we respectfully submit, be the same as though the paragraph as it originally stood had been wholly eliminated without the substitution of any other provision in its place. The discussion below was whether the Board might require of public utilities reports of finances and operations—

> in such form and containing such matters as the Board may from time to time prescribe.

The continuation of that discussion before this court would be wholly futile, for the Philippine Legislature has withdrawn its attempted delegation of discretional authority to the Board.

The principle which we invoke is that when a cause of action is founded on a statute, a repeal of the statute before final judgment destroys the right.

> 1 Lewis's Sutherland, Stat. Constr., 2d Ed., Par. 285.

The rule is stated in Cyc. as follows:

> As a general rule, the repeal of a statute, without any reservation, takes away all remedies given by

> the repealed statute, and defeats all actions pending under it at the time of its repeal. * * * A suit the continuance of which is dependent upon the statute repealed, stops where the repeal finds it. Cyc. Vol. 36, p. 1228.

The rule, as above stated, is supported by the following authorities:

> *United States* v. *The Peggy*, 1 Cranch 103.
> *Baltimore & P. R. Co.* v. *Grant*, 98 U. S. 398.

In the latter case Chief Justice Waite said:

> It is equally well settled that if a law conferring jurisdiction is repealed, without any reservation as to pending cases, all such cases fall within the law.

The questions presented by the record in this case involve an inquiry into the extent of the jurisdiction conferred upon the Board—a quasi-judicial body—by the particular statute then in force and relied upon as the source of the authority which the Board sought to exert. That statute having been stricken from the statute book this particular controversy must, we submit, come to an end. We believe the law to have been correctly expressed by Lord Chief Justice Tindal in the case of Key *v.* Goodwin, 4 Moore & P. 341, in which he said:

> I take the effect of repealing a statute to be to obliterate it as completely from the records of the Parliament as if it had never passed, and that it must be considered as a law that never existed, except for the purpose of those actions or suits which were commenced, prosecuted, and concluded while it was an existing law.

POINT TWO.

PARAGRAPH (e) OF SECTION 16 OF ACT 2307 AS IT EXISTED AT THE TIME OF THE COMMENCEMENT OF THE PROCEEDINGS HERE IN QUESTION WAS VOID AS CONSTITUTING AN UNAUTHORIZED DELEGATION OF LEGISLATIVE POWER TO THE PHILIPPINE BOARD OF PUBLIC UTILITY COMMISSIONERS.

The contention of the respondent Board was that it was empowered to require the Company to file reports of its finances and operations as a common carrier, with the prescribed details, by the terms of sub-paragraph (*e*) of Section 16 of Act 2307, which, at that time, read as follows:

> SEC. 16. The Board shall have power, after hearing, upon notice, by order in writing, to require every public utility as herein defined: * * * (*e*) To furnish annually a detailed report of finances and operations, in such form, and containing such matters as the Board may from time to time by order prescribe.

Section 7 of the Act of Congress of July 1, 1902, known as the Philippine Bill (Fed. Stats. Ann., Vol. 5, p. 720), in force when the statute above cited was enacted, vested the legislative power of the Philippine Government in a legislature created by the Act, by transferring to it the legislative power theretofore exercised by the Philippine Commission. The legislative power of the Philippine Commission was conferred upon that body by the sixth paragraph of the Instructions of the President, of April 6, 1900. (Fed. Stats. Ann., Vol. 5, p. 742.) There can be no doubt that it is a fundamental principle of constitutional law that, subject to certain well defined exceptions, legislative powers cannot be delegated, but must be exercised by the body in which the power is vested,

whether it be by the people directly through the medium of a constitution, or indirectly, as in this case, through Congress, representing, with respect to dependencies, the will of the sovereign. That principle was expressly recognized by the Supreme Court of the Philippine Islands in the case of the *United States* v. *Barrios* (11 Phil. Reps., 329) in which the Court said, quoting Cooley's Constitutional Limitations:

> One of the settled maxims of constitutional law is that the power conferred upon the legislature to make laws cannot be delegated by that department to any other body or authority. Where the sovereign power of the State has located the authority, there it must remain; and by the constitutional agency alone the laws must be made until the constitution itself is changed. The power to whose judgment, wisdom and patriotism this high prerogative has been entrusted cannot relieve itself of the responsibility by choosing other agencies upon which the power shall be devolved, nor can it substitute the judgment, wisdom and patriotism of any other body for those to which alone the people have seen fit to confide this sovereign trust.

To this principle there are three exceptions, as stated on page 321 of Black's Constitutional Law, 2d Edition. It does not apply to—

(*a*) The grant to municipal corporations of legislative powers for local purposes;
(*b*) Local option laws;
(*c*) General laws which are to take effect upon a future contingency, other than ratification by popular vote.

It is clear that the power under which the Board made the disputed order does not fall under either one of the three exceptions above enumerated. The question to be determined then is whether such power is legislative in character or not.

In considering the rules by which to determine whether a power is strictly legislative, or whether it is administrative, and merely relates to the execution of the law, Judge Ranney, in the case of Cincinnati, W. & Z. R. Co. *v.* Clinton County Commissioners, 1 Ohio State 88, said:

> The true distinction is between the delegation of power to make a law, which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made.

Applying the foregoing test it was held in the case of Dowling *et al. v.* Lancashire Insurance Company, 92 Wis. 73, 31 L. R. A. 112, that a statute providing that the insurance commissioner shall prepare, approve, and adopt a printed form of policy for fire insurance to conform as nearly as possible to that used in the State of New York was an unconstitutional attempt to delegate to him a strictly legislative power. In commenting upon the statute the Court said:

> The act, in our judgment, wholly fails to provide definitely and clearly what the standard policy should contain, so that it could be put in use as a standard policy, required to take the place of all others, without the determination of the insurance commissioner in respect to matters involving the exercise of a legislative discretion that could not be delegated, and without which the act could not possibly be put in use, as an act in conformity to which all fire insurance policies were required to be issued.

In discussing the subject of the delegation of legislative power the Court also said:

> The result of all the cases on this subject is that a law must be complete, in all its terms and pro-

> visions, when it leaves the legislative branch of the government, and nothing must be left to the judgment of the electors or other appointee or delegate of the legislature, so that, in form and substance, it is a law in all its details, *in præsenti*, but which may be left to take effect *in futuro*, if necessary, upon the ascertainment of any prescribed fact or event.

In the following cases similar laws were also adjudged unconstitutional, on the ground that they attempted to delegate legislative powers:

> King *v.* Concordia Fire Insurance Company, 140 Michigan 258.
> O'Neil *v.* Insurance Co., 166 Pa. St. 77.
> Anderson *v.* Insurance Co., 59 Minn. 182.

In the case of Ruggles *et al. v.* Collier *et al.*, 43 Mo. 358, the Court said:

> There is a clear distinction to be observed between legislative and ministerial powers. The former cannot be delegated; the latter may. Legislative power implies judgment and discretion upon the part of those who exercise it, and a special confidence and trust upon the part of those who confer it.

In the case of Birdsall *v.* Clark, 73 N. Y. 73, 29 Am. Rep. 105, the Court said:

> If discretion and judgment are to be exercised either as to time or manner, the body or officer entrusted with the duty must exercise it, and cannot delegate it to any other officer or person.

In the case cited a law providing for the appointment of a capitol commissioner by the governor, with authority to remodel and reconstruct the capitol building, and erect a governor's residence at the captial out of the proceeds of the lands donated to the State by Congress, but without specifying what sum should be used for the governor's

residence, or specifying when the buildings should be completed, was held invalid, as an unwarranted delegation of purely degislative power.

In the case of State *ex rel.* Adams *v.* Burdge and others, 95 Wis. 390, a statute authorizing the State Board of Health—

> * * * to make such rules and regulations and to take such measures as may in its judgment be necessary for the protection of the people from Asiatic cholera or other contagious diseases,

and declaring that the term "dangerous and contagious diseases" as used in the act

> * * * shall be construed and understood to mean such diseases as the State Board of Health shall designate as contagious and dangerous to the public health,

was held to

> * * * import and include an absolute delegation of the legislative power over the entire subject here involved,

and was therefore held unconstitutional.

In the case of Merchant's Exchange of St. Louis *v.* Knott, 212 Mo. 616, in declaring unconstitutional, on the ground of delegation of legislative power, a statute authorizing the Board of Railroad and Warehouse Commissioners to establish state inspection of grain

> * * *at such places or in such territory * * * as in their opinion may be necessary

the Court said:

> It is obvious that the foregoing grant of power is given without statutory landmark, compass, map, guidepost, or corner-stone, in one whit controlling its exercise or prescribing its channel, or indicative of

> any certain intendment of the legislative mind, beyond the mere grant. In essence it is the power of pure and simple despotism.

In commenting upon this statute the Court further said:

> True, the Act was passed by the General Assembly, approved by the Chief Executive, and stands published as authenticated law, but to all intents and purposes it is only a barren ideality, having such life as is thereafter breathed into it from an unconstitutional source. No Missourian may know whether it applies to him or his concerns as a rule of civil conduct, or will ever apply until in the "opinion" of the commissioners it "may be considered" necessary. * * * The General Assembly may not clip itself of one iota of its law-making power by a voluntary delegation of any element of it—by putting its constitutional prerogative, its conscience and wisdom, "into commission."

In the case of State *ex rel.* Adams *v.* Burdge, 95 Wis. 390, 37 L. R. A. 157, the Supreme Court of Wisconsin held that the legislature was without authority to delegate legislative powers to the State Board of Health so as to enable it, without the enactment of any statute on the subject, to make a rule excluding children, who are authorized by statute to attend the public schools, from such attendance, unless they had been vaccinated. In the opinion of the Court it was said:

> The true test and distinction whether a power is strictly legislative, or whether it is administrative and merely relates to the execution of a statute law, is between the delegation of the power to make a law, which necessarily involves the discretion as to what it should be, and conferring authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done. To the latter no valid objection can be made * * *. Where an act is clothed with all the forms of law,

> and is complete in and of itself, it may be provided that it shall become operative only upon some certain act or event, or, in like manner, that its operation shall be suspended; the fact of such act or event, in either case, may be made to depend upon the ascertainment of it by some other department, body, or officer, which is essentially an administrative act.

In the case of the State of Minnesota *v.* Great Northern Ry. Co., 100 Minn. 445; 10 L. R. A. (n. s.) 250, the Supreme Court of Minnesota held that a statute which attempts to allow the State Railroad Commission in its discretion to allow an increase of capital stock for such purpose and on such terms as it may deem advisable, or, in its discretion to refuse it, would be unconstitutional, as an attempt to delegate legislative power.

In the case of Field, etc., *v.* Clark, 143 U. S. 694, the Supreme Court said:

> The legislature cannot delegate the power to make a law, but it can make a law to delegate a power to determine some fact upon which the law makes, or intends to make, its own action depend.

In the recent case of the United States *v.* Grinaud, 220 U. S. 519, the Supreme Court said:

> It appeared from the statutes involved that Congress had either expressly or by necessary implication made it unlawful, if not criminal, to obstruct navigable streams; to sell unbranded oleomargarine; or to import unwholesome teas. With this unlawfulness as a predicate, the executive officers were authorized to make rules and regulations appropriate to the several matters covered by the various acts. The violation of these rules was then made an offense punishable as prescribed by Congress. But in making these regulations the officers did not legislate. They did not go outside of the circle of that which the act itself had affirmatively required to be done, or treated as unlawful if done.

In California an act entitled "An Act to Provide for the Proper Sanitary Condition of Factories, etc.," declared—

> If in any factory or workshop any process of work is carried on, by which any dust, filaments, or injurious gases are generated or produced, that are liable to be inhaled by the persons employed therein, and it appears to the Commission * * * that such inhalation could to a great extent be prevented by the use of some mechanical contrivance, it shall direct that such contrivance shall be provided, and within a reasonable time it shall be provided and used.

And Section 6 of the Act made it a misdemeanor for any person to violate any of its provisions. The Court said:

> The manifest objection to this law is that upon the Commissioner has been imposed not the duty to enforce a law of the legislature, but the power to make a law for the individual, and to enforce such rules of conduct as he may prescribe. It is thus arbitrary special legislation and violative of the constitution.
>
> Robert Schaezlein, *et als.*, *v.* Geo. H. Cabaniss, 135 Calif. 466.

Section 20 of the Act to Regulate Commerce (Fed. Stat. Ann. (1st ed.), Vol. 3, p. 850), as amended by the Act of June 29, 1906 (Fed. Stat. Ann. Supp. 1909, p. 274) authorizes the Interstate Commerce Commission to prescribe the form of accounts, records, and memorandums to be kept by carriers subject to the provisions of the Act, and also authorizes the Commission to require such carriers to make annual reports to the Commission of certain statistical information detailed in the Act. The validity of this provision of the Act of Congress, as applied to carriers by water, was called into question in the case of Interstate Commerce Commission *v.* Goodrich Transit Company, 224 U. S. 194. One of the points involved in that decision was the contention made on behalf of the

steamship company that Section 20 as amended constitutes an invalid delegation of legislative power to the Commission. The Supreme Court decided this point adversely to the steamship company, but upon the ground that there had been no such delegation. As will appear from an examination of Sec. 20 of the Act to Regulate Commerce, Congress specifically determined what information may be required from the steamship companies and other common carriers affected. The Interstate Commerce Commission is vested with the discretionary power to require reports or not, as it may see fit, but if it does require reports Congress has already determined what they shall contain. The Philippine statute, on the contrary, as it stood when this controversy arose, left it entirely to the Board of Public Utility Commissioners not only to determine what such reports should contain, but whether they might be required or not.

In its decision last cited the Supreme Court of the United States laid stress upon the fact that Section 20 of the Act to Regulate Commerce, as amended in 1909, expressly enumerates the various matters which must be embodied in the report which the Interstate Commerce Commission is authorized to require carriers under its jurisdiction to file. In other words the Interstate Commerce Commission was vested with authority to decide whether or not reports should be required, but having once exercised its discretion in that particular the law itself determines what the reports shall contain. In passing upon this question the Court said:

> The Congress may not delegate its purely legislative powers to a Commission, but having laid down the general rules of action under which a commission shall proceed, it may require of that commission the application of such rules to particular situations, and the investigation of facts, with a view to making

> orders in a particular matter within the rules laid down by Congress. * * * In Section 20 (of the Commerce Act) Congress has authorized the Commission to require annual reports. *The Act itself prescribes in detail what these reports shall contain.* * * * In other words, Congress has laid down general rules for the guidance of the Commission, leaving to it merely the carrying out of details in the exercise of the power so conferred. This, we think, is not a delegation of legislative authority.

In another part of the same decision the Court said, with respect to the form of reports called for by the Interstate Commerce Commission:

> But such report is no broader than the annual report of such carriers as prescribed by Sec. 20 of the Act.

It is our contention that the language of the decision cited warrants the conclusion that this Court would have held, had Congress merely authorized the Interstate Commerce Commission to require reports of common carriers engaged in interstate business without determining what those reports should contain, that its action would have been invalid as an unlawful delegation of legislative power.

Applying the principles established by the decisions cited it is clear that the Court below did not err in sustaining our contention that Sec. 16, par. (*e*) of Act 2307, as it stood when the case was there decided, wholly fails to provide definitely and clearly what the form of the report and the matters to be contained in such report should be, so that the section could be enforced "without the determination" by the Board of Public Utility Commissioners of matters involving "the exercise of a legislative discretion." What the form of the report shall be, what matters shall be contained in the report, and when such report shall be required are by the statute in question entirely left to the will and discretion of the Board, without

making these things depend upon any future contingency or any fact to be ascertained. Nobody knows what the law is or when it shall be in force, until the Commissioners have decided what it shall be and when it shall be effective. And this was to be done by the Board, under the statute as originally enacted,

> without statutory landmark, compass, map, guide-post or corner-stone, in one whit controlling its exercise or prescribing its channel,

for under the statute complained of, as it stood before amendment by Sec. 12 of Act 2694 of the Philippine Legislature, the matters to be contained in the report were such matters

> as the Board may from time to time by order prescribe.

The legislature alone, we submit, can lawfully exercise such a power, because it involves the discretion to determine what the law shall be.

Tested by the foregoing principles, we contend that the Court below held correctly in deciding that par. (*e*) of Sec. 16 of Act 2307 as it stood at the time of the decision was an attempt on the part of the Philippine Legislature to delegate legislative authority to the Board of Public Utility Commissioners, and that it was therefore void as being in contravention of the Philippine Bill.

CONCLUSION.

It is therefore respectfully submitted that (1) this proceeding should be dismissed upon the ground that the repeal of the disputed statute has terminated the controversy, or (2) if considered on the merits, that the judgment of the Court below should be affirmed.

F. C. FISHER,
Counsel for Defendant in Error.

WASHINGTON, D. C.,
September 4, 1917.